Amendments to the Excise Tax Act, a Related Act, the Cultural Property Export and Import Act, the Customs Act, the Excise Act, the Income Tax Act and the Tax Court of Canada Act

Explanatory Notes

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

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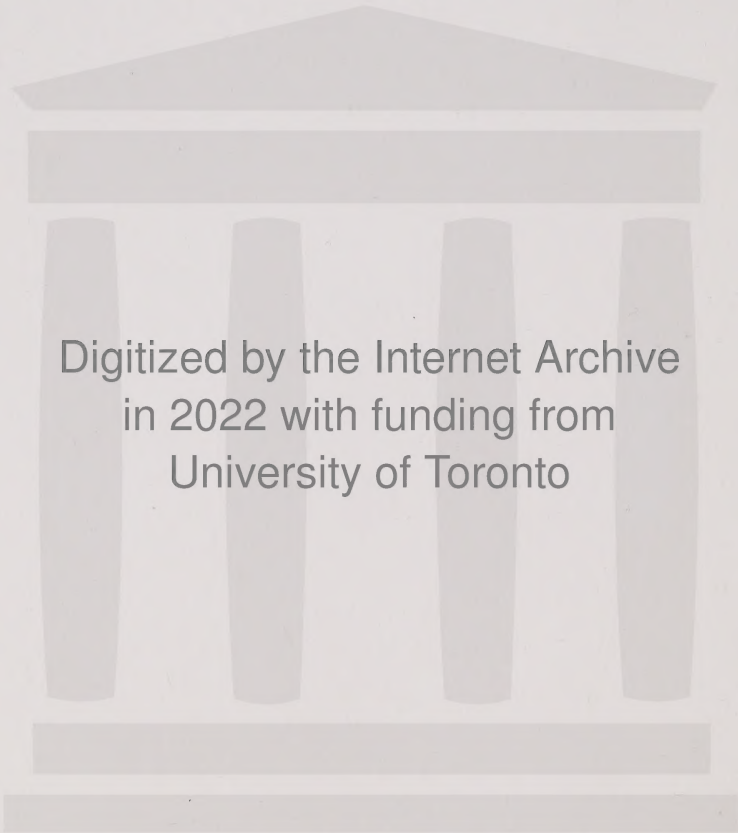

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PREFACE

The legislation to which these explanatory notes relate contains amendments to the *Excise Tax Act* and a related Act, the *Cultural Property Export and Import Act*, the *Customs Act*, the *Excise Act*, the *Income Tax Act* and the *Tax Court of Canada Act*. The majority of these amendments are intended to implement proposed sales tax measures announced in March and November 1997, July, August, October and December 1998 and January and March 1999. The legislation is also intended to implement the sales tax initiatives proposed in the February 24, 1998 federal budget. The amendments to the *Cultural Property Export and Import Act*, the *Customs Act* and the *Income Tax Act* are intended to parallel certain of the proposed changes to the *Excise Tax Act*.

In addition, the legislation contains some amendments to the parts of the *Excise Tax Act* that do not pertain to the Goods and Services Tax or Harmonized Sales Tax. Specifically, the legislation includes amendments necessary to repeal the tax regime for split-run editions of periodicals, as announced by the government on July 29, 1998. Other amendments deal with the excise tax on tobacco products, the most substantive of which is the reduction of the tobacco export tax exemption proposed in the February 16, 1999 federal budget.

Finally, amendments are proposed to the *Tax Court of Canada Act* dealing with administrative matters and minor clarifying amendments are proposed to the *Excise Act* dealing with specially denatured alcohol.

The explanatory notes describe the proposed amendments, clause by clause, for the assistance of Members of Parliament and Senators, as well as taxpayers and their professional advisors.

It should be noted that amendments that are proposed to come into force on December 17, 1990, the day on which the legislation that enacted the Goods and Services Tax received Royal Assent, are described in these notes as having effect as of January 1, 1991, the day on which the tax was implemented.

These explanatory notes are provided to assist in the understanding of the proposed amendments to the *Excise Tax Act* and a related Act, the *Cultural Property Export and Import Act*, the *Customs Act*, the *Excise Act*, the *Income Tax Act* and the *Tax Court of Canada Act*. These notes are for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Clause 1

Short Title

This clause provides that the enactment to which these notes relate may be cited as the "*Sales Tax and Excise Tax Amendments Act, 1999*".

Clause 2

Definitions for Purposes other than Part IX of the *Excise Tax Act*

ETA
2(1)

Subsection 2(1) of the *Excise Tax Act* contains definitions of terms that apply for purposes of the parts of the Act that do not relate to the Goods and Services Tax or Harmonized Sales Tax (GST/HST).

Subclause 2(1)

Application of Definitions in Section 2

ETA
2(1)

Existing subsection 2(1) makes reference to Schedules V to VII, which pertain to Part IX of the Act. However, it fails to reference Schedules VIII to X, which were added as a consequence of the introduction of the HST. The subsection is amended by deleting the references to the parts of the Act pertaining to the GST/HST and to related schedules and instead specifying only those parts of the Act to which the definitions in section 2 do apply.

The amendment is deemed to have come into force on March 20, 1997, the day on which the new schedules to the Act relating to the HST came into force.

Subclause 2(2)

Definition "this Act"

ETA
2(1)

The definition "this Act" in subsection 2(1) is amended by including a reference to Schedules VIII to X of the Act, which were added as a consequence of the introduction of the HST. This amendment comes into force on March 20, 1997, the day on which those Schedules came into force.

Clause 3

Tobacco Export Tax Exemption

ETA
23.21(2)

Existing subsection 23.21(2) provides for an exemption from the tax on exported tobacco products imposed under subsection 23.2(1). Under existing subsection 23.21(2), the exemption applies to the extent that the quantity of a particular category of tobacco product exported by a manufacturer or producer in a calendar year does not exceed 3% of the total quantity of that product it manufactured or produced in the preceding calendar year.

This subsection is amended to reduce the annual exemption from 3% to 2 1/2%, effective April 1, 1999. However, in respect of tobacco products exported on or after that day and before January 1, 2000, the exemption limit to be applied is 2 5/8%, effectively pro-rating the reduction over the course of the 1999 calendar year.

Clause 4

Interest and Penalty

ETA
34(2) of the French Version

Subsection 34(2) provides that interest and penalty are to be paid by a taxpayer who has failed to make instalment payments relating to the tobacco inventory tax. The English version of this subsection uses the expression "shall pay" instead of "liable to pay". When the former expression is used in the English version of the Act, the French version usually uses the phrase "*tenue de payer*". Therefore, for consistency of terminology, the French version of subsection 34(2) is amended by replacing the word "*passible*" with the expression "*tenue de payer*". Similar changes are made to the French version of subsections 280(1) and (2).

This amendment comes into force on Royal Assent.

Clause 5

Tax on Split-run Periodicals

ETA
Part V.1

Existing Part V.1 of the Act imposes a tax on split-run editions of periodicals. The amendment repeals Part V.1, effective October 30, 1998, as announced by the government on July 29, 1998. This amendment is made in response to the decision of the World Trade Organization Appellate Body in the matter of *Canada – Certain Measures Concerning Periodicals*.

Clause 6

Tax on Exported Goods

ETA
66(2)

Subsection 66(2) provides that the exemption under subsection 66(1) from excise tax on exported goods does not apply to tax on exported tobacco products and split-run editions of periodicals (Part V.1 of the Act). The amendment deletes the reference to Part V.1 as a consequence of the repeal of that Part, effective October 30, 1998 (see clause 5).

Clause 7

Tax Paid on Exported Goods

ETA
68.1(2)

Subsection 68.1(2) provides that the refund of excise tax paid on exported goods provided for under subsection 68.1(1) does not apply to tax paid on exported tobacco products and split-run editions of periodicals (Part V.1 of the Act). This amendment deletes the reference to Part V.1 as a consequence of the repeal of that Part, effective October 30, 1998 (see clause 5).

Clause 8

Penalty and Interest on Tax in Default

ETA
79(1)

Section 79 imposes interest and penalty on taxes in default. The amendment deletes the reference in that section to section 37 as a consequence of the repeal of Part V.1 of the Act, effective October 30, 1998 (see clause 5).

Clause 9

Definitions

ETA
123(1)

This clause amends subsection 123(1), which contains definitions used in Part IX of the Act relating to the GST/HST.

Subclause 9(1)

Definitions "mineral" and "specified Crown agent"

ETA
123(1)

"mineral"

The term "mineral" is relevant for the purposes of section 162, which deals with supplies of natural resource royalties and related rights. It is also used in new subsection 162(4), added by subclause 17(3), which deals with agreements to explore for or exploit mineral deposits.

For these purposes, the term "mineral" is intended to include, in addition to those substances that would be considered to be minerals within the ordinary meaning of that word, the substances specifically mentioned in the definition of "mineral" in subsection 123(1). The existing definition expressly includes petroleum, natural gas and related hydrocarbons as well as sand and gravel.

The definition "mineral" is amended, effective January 1, 1991, to clarify that it also includes ammonite gemstone, bituminous sands, calcium chloride, coal, kaolin, oil shale and silica, consistent with administrative interpretation and with the express inclusion of those substances in the definition "mineral" for purposes of the *Income Tax Act.*

"specified Crown agent"

The term "specified Crown agent", as defined in existing subsection 123(1), refers to agents of Her Majesty in right of Canada

that are prescribed by regulations made for purposes of that definition. The term is relevant for purposes of special rules contained in sections 200 and 209, which deal with the disposition of capital property by the prescribed Crown agents.

The special rules for specified Crown agents are necessary given that, unlike other Crown agents, specified Crown agents pay tax on their purchases and do not recover the tax except to the extent that they are entitled to input tax credits or rebates under the Act. As well, they follow the same rules as do other businesses with respect to the treatment of sales of property in respect of which they have not claimed input tax credits. Accordingly, specified Crown agents are excluded from the rule under subsection 200(4), which provides that all sales of capital property by governments are taxable. For specified Crown agents, like other registrants, if such property were not used primarily in a commercial activity, it would not be taxable on resale. Subsection 209(2) provides that the capital real property of specified Crown agents is treated like capital personal property, as is the case for public service bodies such as municipalities.

The prescribed federal Crown agents that are included in the existing definition "specified Crown agent" are referred to in new paragraph (*a*) of the amended definition. The amendment adds certain provincial Crown agents to the definition under new paragraph (*b*).

In most cases, provincial Crown agents that pay tax on their purchases without invoking their constitutional immunity from taxation do so because of an agreement under section 32 of the *Federal-Provincial Fiscal Arrangements Act* entered into by the government of the province and the federal government. Such agents are included in the definition "specified Crown agent" under new subparagraph (*b*)(i) of the definition.

Subparagraph (*b*)(ii) of the amended definition contemplates the situation where a province that had not entered into any such formalized agreement nevertheless, for equity reasons, chooses to have particular provincial Crown agents pay the GST/HST and recover it in the same manner as do non-government entities with which those agents may compete. Such an agent might request to be

prescribed as a "specified Crown agent" so that it could apply the same capital property rules as do public service bodies in the case of property of the agent that the agent also requests be prescribed by regulation pursuant to amended subsection 200(4) (see clause 32). A provincial Crown agent might request that it be prescribed where it had particular capital property on which tax was paid but not recovered and the property is to be sold under conditions in which the agent would otherwise be required to charge tax.

The amendment to the definition "specified Crown agent" comes into force on December 11, 1998.

Subclause 9(2)

Definition "direct cost"

ETA
123(1)

Section 5.1 of Part V.1 of Schedule V, and section 6 of Part VI of that Schedule, each describe a supply, made by a charity and public service body respectively, that is exempt based on the amount charged for the supply in relation to the "direct cost" of the supply. The direct cost of a supply generally includes provincial taxes, duties or fees prescribed under section 154 (e.g., provincial sales tax).

The definition "direct cost" is amended to exclude any portion of such provincial tax, duty or fee that is recovered or recoverable by the charity or body. An exception to this exclusion is made where the provincial tax is the Québec Sales Tax (QST) and the charity or body is a QST registrant at the time that the QST became payable.

This amendment generally applies to supplies for which consideration becomes due, or is paid without having become due, after 1996. However, an exception to this general application rule applies to supplies made on or before November 26, 1997 where the charity or body did not charge or collect tax in respect of the supply. In that case, the amendment applies (without the exception for the QST) only if all of the consideration for the supply became due or was paid on or after January 1, 1997 and before April 1, 1997, which is consistent with a previous amendment to the definition (enacted by c.10, S.C., 1997).

Subclause 9(3)

Definition "financial service"

ETA
123(1)

Services that fall within the definition "financial service" in subsection 123(1) are generally exempt under the GST/HST. Paragraph (*q*) of that definition excludes certain management and administrative services from the definition "financial service", thereby rendering them taxable unless some other exemption applies.

The amendment to paragraph (*q*) of the definition "financial service" adds explicit reference to an "investment plan" to confirm that management or administrative services provided to any investment plan are subject to the GST/HST. An "investment plan" is defined in subsection 149(5) to include a number of vehicles in which funds are pooled and invested, such as a trust governed by a registered pension plan, registered retirement savings plan or mutual fund trust. The clear policy intent has always been that tax apply to management or administrative services when provided to such entities.

This policy is reflected in the existing legislation by excluding from the definition "financial service" management or administrative services provided to a corporation, partnership or trust, the principal activity of which is the investing of funds. The amendment adds explicit reference to an "investment plan" for greater certainty.

The addition of the reference to an "investment plan" in paragraph (*q*) applies to supplies of services for which any consideration becomes due, or is paid without having become due, after July 29, 1998. It also applies to any supply for which all of the consideration either becomes due or is paid before July 30, 1998 if the supplier treated the supply as taxable (i.e., charged or collected GST/HST) and no rebate under section 261, or tax adjustment under section 232, was claimed in respect of that supply before July 29, 1998. The coming into force rule reflects the application of a previous amendment to paragraph (*q*).

Subclauses 9(4) and (5)

Definition "related convention supplies"

ETA
123(1)

The definition "related convention supplies" in subsection 123(1) is relevant for the purposes of sections 167.2 and 252.4, which both provide for tax relief on items defined as "related convention supplies" in respect of conventions in Canada attended by non-residents. Subsection 167.2(1) results in no tax being charged to non-resident attendees on that portion of the convention fee that is reasonably attributable to "related convention supplies". Section 252.4 provides for a rebate in respect of "related convention supplies" relating to a foreign convention (as defined in subsection 123(1)).

The effect of the amendment to the definition "related convention supplies" is that, for purposes of subsection 167.2(1) and section 252.4, the property and services that qualify for the relief newly include food, beverages and catering services. For the purposes of the rebate under section 252.4, this change applies to foreign conventions for which all admissions are sold after February 24, 1998. For the purposes of subsection 167.2(1), the change applies to conventions for which all of the admissions are sold after Announcement Date.

Subclause 9(6)

Definitions "continuous transmission commodity", "secured creditor", "security interest" and "straddle plant"

ETA
123(1)

"continuous transmission commodity"

The new definition "continuous transmission commodity" is relevant for the purposes of new section 144.01, which deals with the in-transit exportation or importation of such commodities. The definition is also relevant for the purposes of new sections 15.1 and

15.2 of Part V of Schedule VI relating to exports and new paragraphs 217(*b*.2) and (*b*.3) relating to imported taxable supplies. The term "continuous transmission commodity" refers to electricity, crude oil, natural gas, or any tangible personal property, that is transportable by means of a wire, pipeline or other conduit.

This definition is added effective August 7, 1998.

"secured creditor" and "security interest"

Existing subsection 317(4) contains the definitions "secured creditor" and "security interest", which apply for the purposes of subsection 317(3). As these terms are newly referenced in amended sections 156 and 222 as well, the definitions are added to subsection 123(1) so that they apply to Part IX of the Act generally. A concurrent amendment is made to repeal subsection 317(4).

There are no substantive changes to these definitions. The definition "secured creditor" is restructured for clarification purposes only so as to avoid the use of the defined term in the definition itself.

These amendments come into force on Royal Assent.

"straddle plant"

The new definition "straddle plant" is relevant for the purposes of new subsection 153(6), which deals with exchanges of natural gas liquids for make-up gas. It is also relevant for the purposes of new section 15.1 of Part V of Schedule VI dealing with certain zero-rated supplies of continuous transmission commodities (as newly defined in subsection 123(1)). In addition, the term is used in the amended definition "continuous outbound freight movement" in subsection 1(1) of Part VII of Schedule VI.

The term "straddle plant" refers to a natural gas processing plant devoted primarily to the recovery of natural gas liquids or ethane from natural gas that is transported by pipeline to the plant by a common carrier of natural gas.

The definition "straddle plant" is added effective August 7, 1998.

Clause 10

Segregated Funds

ETA
131

Section 131 deals with the treatment of segregated funds of insurers. A segregated fund of an insurer is deemed to be a trust that is a separate person from the insurer, and the insurer is deemed to be the trustee. Activities of the segregated fund are considered to be activities of the trust, and not of the insurer. The segregated fund is thereby treated as having the capacity, in its own right, to make supplies and acquire property and services in consideration for which charges are made against the fund.

New paragraph 131(1)(*c*) is added to clarify the effect of treating the fund as a separate person, particularly with respect to the expenditures from the fund in respect of property and services.

Where a person other than the insurer makes a supply of property or services that relate directly to the fund and are paid for out of the fund, it is clear that the supplier is considered to be making a supply to the fund. This is by virtue of the fact that the fund is deemed to be a separate person and its activities (including acquisitions) are treated as those of the fund and not of the insurer. The amendments to section 131 do not address this case. For example, if a deduction is made from the fund to cover a charge for an outside investment broker who provides the services of brokering financial instruments held by the fund and does not also provide management or administrative services, that supply is considered to be made to the fund rather than to the insurer and continues to be exempt.

The case that subparagraph (*c*)(i) addresses is where the insurer is considered to be supplying the property or services to the fund. In this case, subparagraph (*c*)(i) ensures that the supply is a taxable supply, consistent with the general treatment of supplies by trustees to trusts.

In all other cases, subparagraph (*c*)(ii) is added for greater certainty as to whether a deduction from the fund is in respect of property or services acquired by the fund. Subparagraph (*c*)(ii) expressly deems

the fund to have received a taxable supply of a service from the insurer for which the deduction is deemed to be the consideration.

Paragraph 131(1)(*c*) does not apply to amounts referred to in subsection 131(2). Subsection 131(2) excludes from the ambit of paragraph (1)(*c*) payments to policyholders who hold interests in the fund. Provision is made to prescribe other amounts that are not intended to be taxable, should it be necessary.

Paragraph 131(1)(*c*) and subsection 131(2) apply to any amount deducted from a segregated fund on or after March 16, 1999, as well as to any amount deducted from a segregated fund before that day where the amount has been treated as taxable (i.e., tax calculated on the amount was also deducted from the fund and a refund or adjustment of that tax was not claimed before March 16, 1999).

Clause 11

Lease, etc. of Property and Ongoing Services

ETA
136.1

Section 136.1 deems separate supplies to be made for each period to which a periodic payment is attributable under a lease, licence or similar arrangement or under a service contract covering more than one billing period.

Subclause 11(1)

Lease, etc. of property

ETA
136.1(1) of French Version

The amendment to the preamble of subsection 136.1(1) of the French version of the Act replaces the existing reference to deeming rules with a reference to the rules that follow that preamble. A similar amendment is made to subsection 136.1(2) of the French version of the Act.

This amendment comes into force on December 10, 1998.

Subclause 11(2)

Place of Supply for Lease Interval

ETA
136.1(1)(*d*)

With the introduction of the HST on April 1, 1997, section 136.1 was added to treat the provision of property by way of lease, licence or similar arrangement for each separate payment period under the arrangement as a separate supply. Consequently, if, for example, a piece of leased equipment were relocated to or from a participating province during the term of a long-term lease, each lease payment would be taxed at the appropriate rate. However, it is not intended that this separate-supply rule apply for the purposes of determining whether the entire supply is considered to be a supply made in Canada or outside Canada in the first place.

The amendment is intended to ensure that the test of whether a supply of property by way of lease, licence or similar arrangement is made in or outside Canada continues to be a once-and-for-all test that is irrespective of the separate-supply rule. For example, in the case of tangible personal property, the determination would generally be based on where legal delivery of the property was made to the recipient under the terms of the arrangement (i.e., where possession or use was first given or made available to the recipient). This determination would govern whether all the deemed supplies made under the arrangement were considered to be made in or outside Canada, irrespective of whether the property were situated in Canada during some lease intervals and outside Canada during others.

New paragraph 136.1(1)(*d*) provides that, if the place of supply of the property without regard to the deeming rule under paragraph 136.1(1)(*a*) would be considered to be in Canada, that is the place of supply for all of the supplies that are, because of that paragraph, considered to be made under the arrangement. Likewise, if the place of supply would be considered to be outside Canada, all of the supplies are considered to be made outside Canada.

This amendment comes into force on December 10, 1998.

Subclause 11(3)

Delivery on Exercise of Option

ETA
136.1(1.1)

New subsection 136.1(1.1) specifies, for greater certainty, the time and place at which a recipient who had been leasing property is treated as receiving delivery of it as a purchaser when the recipient exercises a purchase option and maintains physical possession of the property. It is the same time and place at which the recipient begins to have possession of the property as purchaser and ceases to have possession as lessee or licensee.

For example, where a person who is a lessee under a lease of goods exercises an option provided for under the lease to purchase the goods while retaining physical possession of the goods, the time and place of delivery of the goods in relation to the purchase is the time and place at which the person begins to have possession as purchaser (i.e., generally when ownership transfers) and not the time and place at which the person first took possession of the property as lessee.

New subsection 136.1(1.1) comes into force on April 1, 1997.

Subclause 11(4)

Ongoing Services

ETA
136.1(2) of French Version

As is the case for subsection 136.1(1), an amendment is made to the preamble of the French version of subsection 136.1(2) to replace the existing reference to deeming rules with a reference to the rules that follow that preamble.

This amendment comes into force on December 10, 1998.

Clause 12

Property in Transit

ETA
144.01

Continuous transmission commodities (i.e., oil, natural gas or electricity transported by pipeline or power-line) may be transported across the Canadian border more than once en route to a delivery point in or outside Canada solely because of the route the pipeline or power-line must take. In this situation, the administrative position has been to base the tax treatment on the origin and ultimate destination of the commodity and not on the in-transit border crossings. In other words, tax does not apply where such a commodity crosses the border solely for the purpose of being transported by pipeline or power-line from a place outside Canada to another place outside Canada or from a place in Canada to another place in Canada. Section 144.01 is added to codify the administrative practice for greater certainty.

Section 144.01 also ensures that the commodity is still considered "in-transit" when it is stored or taken up as surplus product for a period until it is further transported. It must be the same measure of commodity that is further transported and it must be in the same state when further transported (i.e., not processed or altered during the interruption in its transportation to the ultimate destination) except to the extent of any consumption or alteration of the product that may be necessary or incidental to its transportation. Since it is not possible to physically hold the same unit of electricity over time or may not be feasible to hold the same molecules of oil or gas in a reserve, the product that is further transported must be merely equivalent to that which entered the pipeline or power-line at the place of origin.

The deeming under section 144.01 does not apply in relation to the references to property being imported or exported in section 4 and new sections 15.3 and 15.4 of Part V of Schedule VI. For purposes of determining if a supply is zero-rated under any of those provisions, they are read as though the in-transit border crossings continue to be viewed as importations and exportations.

Section 144.01 applies to the transportation of any continuous transmission commodity from a place of origin to a destination, including any intermediate transportation to or from a place where the commodity is stored or taken up as surplus, if the transportation from the place of origin begins after August 7, 1998.

Clause 13

Financial Institutions

ETA
149

Existing paragraph 149(1)(*b*) provides for a "*de minimis*" test, which serves to determine whether persons earning investment income or income from separate fees or charges for financial services are considered to be financial institutions (referred to as "*de minimis* financial institutions") for purposes of the GST/HST. For the most part, *de minimis* financial institutions are subject to the same GST/HST rules as are traditional financial institutions such as banks, trust companies and insurance companies.

One aspect of the *de minimis* test involves comparing the amount of a person's financial revenue to the person's total revenue. Under the existing test, a person's financial revenue includes revenue from supplies of precious metals such as gold since a "financial instrument" includes a precious metal. As a result, a refiner of precious metals will have a high ratio of financial revenue to total revenue and can easily fall into the category of a *de minimis* financial institution. This is despite the fact that the supply of precious metals by a refiner is a commercial activity because it is a zero-rated supply as opposed to an exempt supply.

The zero-rating of supplies of precious metals by refiners is to avoid tax cascading at the next stage of distribution of the financial instrument. However, this objective is frustrated to the extent that the refiner, by being considered a *de minimis* financial institution, is denied input tax credits for costs incurred in connection with any financial activities (such as capital raising) related to its commercial activity.

The amendments to section 149 have the effect of ensuring, retroactive to January 1, 1991, that the revenue from zero-rated supplies of precious metals is included in the total revenue from supplies but not in the portion of that total that is determined to be the financial revenue. This is accomplished for taxation years beginning on or before April 23, 1996 by adding subsections 149(4.01) and (4.02), which coincide with how paragraph 149(1)(*b*) read for those taxation years. For taxation years beginning after that day, subsection (4.01) is retained and amended to conform to the existing wording of paragraph 149(1)(*b*), while subsection 149(4.02) is replaced by the addition to clause 149(1)(*b*)(i)(B) of the words "that are not zero-rated supplies described by section 3 of Part IX of Schedule VI".

Clause 14

Value of Consideration

ETA
153

Section 153 contains rules for determining the value of consideration for supplies made in special circumstances, most notably barter arrangements. To the extent that the supply in question is a taxable supply made by a registrant, the determination under section 153 will have bearing on the amount of tax, if any, payable by the recipient.

Subclauses 14(1) to (3)

Sale-leaseback Arrangements

ETA
153(4.1) to (4.5)

New subsection 153(4.1) deals with the situation where a lessor purchases tangible personal property from another person who is not required to collect tax on the sale (e.g., a person engaged only in making exempt supplies or a consumer) and immediately leases the property back to that other person. Such sale-leaseback arrangements are sometimes entered into as an alternative means of financing the acquisition of the property by the lessee. The effect of new

subsection 153(4.1) is that the amount paid or credited for the sale is ultimately deducted from the lease payments in determining the GST/HST on the lease.

The amount deducted from a particular lease payment is referred to as the "purchase credit". For simplicity, the total of the possible purchase credits is generally spread out evenly over the number of lease payments. Where the aggregate amount of the lease payments equals or exceeds the sale price of the property to the lessor and there is no change in the number of lease payments from the time the lease is entered into, the periodic purchase credit is determined once, at the beginning of the lease. In this case, it would be equal to the sale price to the lessor divided by the total number of lease payments.

In some cases, the aggregate amount of the lease payments might be less than the sale price of the property to the lessor (e.g., where the lessor intends to make one or more other supplies of the property by way of lease). In that case, the sale price divided by the number of lease payments could result in a value in excess of a particular lease payment. However, the maximum amount that can be deducted from any one lease payment is the amount necessary to bring that payment to zero.

The rules under new subsections 153(4.1) to (4.4) also accommodate the situation where there is a renewal, variation or early termination in a lease that changes the number of lease payments. As well, the rules address the situation where a lease is assigned to a new lessor but the lessee and the property remain the same. In each of these cases, the lessee is considered to have entered into a "subsequent lease" for purposes of recalculating the purchase credit in respect of the remaining lease payments.

The new periodic purchase credit is calculated at that time based on the amount of the sale price of the property under the original sale-leaseback arrangement that has not already been deducted from preceding payments (referred to as the "unused total purchase credit"). The unused total purchase credit is then divided by the number of payments to be made under the new or modified arrangement. Again, the maximum amount that can be deducted from any one lease payment is the amount necessary to bring that payment to zero.

As an example, if the lessor and lessee agree to an early termination of the lease, there will be a recalculation of the purchase credit applicable to any payment that becomes due or is paid without having become due after the time at which the termination is agreed to. Paragraph 153(4.4)(*a*) deems the lessor and lessee to have entered into a "subsequent lease" at that time. Assume there is only one final payment to be made. Paragraph 153(4.4)(*b*) deems that payment to be in respect of a supply under the deemed subsequent lease. Since that final payment is the only payment to be made under the deemed subsequent lease, the unused total purchase credit is divided by 1 in determining, under the formula in subsection 153(4.1), the purchase credit applicable to that final payment. Therefore, that purchase credit would be equal to the entire unused total purchase credit except that, here again, the purchase credit cannot exceed the amount of the payment.

New subsection 153(4.5) addresses the situation where the lessee exercises an option to purchase the property provided for in the original leaseback agreement or in a subsequent lease in respect of that agreement. In that case, the entire amount of the unused total purchase credit at that time can be deducted from the purchase price, up to the amount of that purchase price. No further purchase credits are deductible after that point.

New subsection 153(4.6) deals with non-arm's length sales of property by a lessee to a lessor for more than fair market value. In this case, the consideration for the sale is deemed to be equal to the fair market value of the property for the purposes of calculating the purchase credit under subsection 153(4.1).

Similar conditions as apply to the application of the trade-in rule in subsection 153(4) also apply to sale-leaseback arrangements. These conditions are set out in subsection 153(5), which is amended to cover the new sale-leaseback rules.

Generally, the new sale-leaseback rules apply to supplies made under sale-leaseback arrangements entered into after 1998. However, in the case of a variation or renewal of an original leaseback agreement that does not constitute a new agreement but does result in a greater number of payments under that agreement, the requirement to recalculate the periodic purchase credit does not apply to that particular variation or renewal if it takes effect before July 1999.

Subclause 14(4)

Exchange of Natural Gas Liquids for Make-up Gas

ETA
153(6)

When ethane or natural gas liquids (each of which is referred to as "natural gas liquids") are recovered from natural gas at a processing plant, a certain amount of gas (referred to as "make-up gas") is often added to the residue gas to make up for the loss of energy content due to the recovery. This sometimes involves a transaction whereby the person holding the rights to the natural gas liquids exchanges the liquids or the rights to them for the make-up gas supplied by the other party to the transaction. The transaction may or may not also involve the payment by either party of monetary consideration.

The exchange of natural gas liquids and make-up gas is normally between the owner of the gas and the processing plant operator but there may be intermediary transactions as well involving such an exchange. A third party might acquire the rights to the natural gas liquids from the owner of the gas before it is processed and promise to supply, in return, the necessary make-up gas after the processing. In that case, there could be more than one exchange to which subsection 153(6) applies. For example, there could be an exchange between the owner of the gas and the third party and another exchange between the third party and the plant operator who supplies the make-up gas to the third party for re-supply to the owner.

New subsection 153(6) provides that, to the extent that consideration for natural gas liquids, or the right to them, is make-up gas, or *vice versa*, the value of that consideration is nil. This means that tax need not be calculated in respect of that consideration. If there is any monetary consideration, tax would be calculated on it in the normal manner.

New subsection 153(6) applies to any exchange of natural gas liquids, or the right to extract natural gas liquids, for make-up gas where, under the agreement for the exchange and after August 7, 1998, any make-up gas is given as consideration for a supply of natural gas liquids or the right to extract natural gas liquids, or natural gas liquids

or the right to extract natural gas liquids is given as consideration for a supply of make-up gas.

Clause 15

Provincial Levies

ETA
154

Existing section 154 provides that the consideration for a supply of property or a service includes all taxes, duties and fees (other than the GST/HST and provincial or municipal taxes, duties or fees prescribed under the *Taxes, Duties and Fees (GST) Regulations*) payable by the recipient or payable or collectible by the supplier in respect of that property or service.

The reference to taxes collectible by suppliers in existing section 154 is intended to ensure that the provision applies equally to supplies of taxable products by persons who act as collection agents in respect of the taxes. Some specific taxes (such as tobacco and fuel taxes) that are imposed under provincial statutes depend on a collection mechanism that imposes obligations on wholesalers of the products. However, the various provincial statutes differ in the wording used to describe the amounts collectible by wholesalers in their capacity as collection agents.

To avoid any ambiguity in the application of section 154 to the specific product taxes imposed in different provinces, the amendment to section 154 clarifies that the consideration for a supply of property or a service includes an amount collectible by a supplier that is equal to, or collectible as, on account of, or in lieu of, a tax, duty or fee that is imposed by a provincial statute in respect of the supply, consumption or use of the property or service.

This amendment applies for the purpose of determining the consideration for supplies made after November 26, 1997.

Section 154 is also amended by adding new subsection (3), which provides an interpretation rule relating to references in that section to a "recipient" of a supply. The provincial levies that are intended to

be excluded from the consideration for a supply are only those that the recipient of the supply is liable to pay. The problem arises when another provision of Part IX of the Act deems someone else to be the recipient who is not the taxpayer under the provincial legislation. New subsection 154(3) ensures that, in such a situation, the reference to "recipient" in section 154 is read as a reference to the person who would, but for the deeming under that other provision, be the recipient within the meaning of Part IX.

This amendment comes into force on Announcement Date.

Clause 16

Election for Closely Related Persons

ETA
156

Existing section 156 allows certain members (defined as "specified members") of a closely related group of corporations to elect to treat certain supplies between them as having been made for nil consideration. The effect is that the members need not account for otherwise fully recoverable tax on the supplies. Effective October 8, 1998, amended section 156 extends this election to certain partnerships (referred to as "Canadian partnerships") that are specified members of a qualifying group.

Subsection 156(1) Definitions

Subsection 156(1) is amended to add the following definitions of terms used in amended section 156:

"Canadian partnership"

The election under subsection 156(2) is extended to members of a group of related persons that includes a "Canadian partnership". A partnership must meet two conditions to qualify as a "Canadian partnership". No member of the partnership can be a person other than a corporation or a partnership and all members must be resident in Canada (within the meaning of Part IX of the Act).

"qualifying group"

The term "qualifying group" refers to a group whose members are entitled to make an election under subsection 156(2) if they qualify as "specified members". A "qualifying group" includes a "closely related group", whose specified members are eligible under existing section 156 to make the election. A "closely related group" consists solely of corporations that are closely related to each other within the meaning of section 128. The term "qualifying group" also includes a group consisting of Canadian partnerships, or of Canadian partnerships and corporations resident in Canada, that are closely related according to the rules set out in new subsections 156(1.1) and (1.2).

"secured creditor" and "security interest"

The terms "secured creditor" and "security interest" are relevant for purposes of new paragraph 156(1.3)(*b*). This paragraph sets out a rule for determining if a person or a group is considered to hold all or substantially all of the interest in a partnership (one of the criteria relevant to determining under new subsection 156(1.1) whether a partnership and another person are closely related). The paragraph provides that, among other things, the person or group must be able to direct the business and affairs of the partnership or would be so able if no secured creditor had any security interest in an interest in, or property of, the partnership.

For this purpose, the terms "secured creditor" and "security interest" have the meanings assigned by subsection 317(4). Effective on Royal Assent, subsection 317(4) is repealed and the same definitions of those terms are added to subsection 123(1) so that they apply for all purposes of Part IX of the Act.

"specified member"

The term "specified member" refers to a person that is eligible to make an election under subsection 156(2). The definition is amended to replace the existing reference to a "closely related group" with a reference to a "qualifying group", which is newly defined in subsection 156(1) to include not only a closely related group of corporations but also a group of closely related persons that include one or more Canadian partnerships. Accordingly, the definition

"specified member" is also amended to reflect the fact that the member may be either a corporation or a partnership.

Subsection 156(1.1) Closely Related Persons

New subsection 156(1.1) contains rules for determining whether two Canadian partnerships, or a Canadian partnership and a corporation resident in Canada, are closely related for the purposes of section 156. A number of scenarios are covered by these rules. In all cases, however, both persons must be registrants.

Paragraph 156(1.1)(*a*) provides the rules for determining whether two Canadian partnerships are closely related. Under the most direct relationship, two Canadian partnerships are considered closely related to each other if one of the partnerships holds all or substantially all of the interest in the other partnership (as determined under new subsection 156(1.3)).

Paragraph 156(1.1)(*b*) provides the rules for determining whether a Canadian partnership is closely related to a corporation resident in Canada. Under the most direct relationship, a Canadian partnership and a corporation resident in Canada are considered closely related if the partnership owns 90% or more of the value and number of the issued and outstanding shares of the corporation having full voting rights under all circumstances or if the corporation holds all or substantially all of the interest in the partnership.

The following example presents a scenario in which the two paragraphs apply:

> Assume AB partnership consists of two members A and B, both corporations resident in Canada. Corporation B is a wholly owned subsidiary of corporation A. Corporations A and B and the AB partnership decide to form a new partnership. The two corporations and the two partnerships are registrants engaged exclusively in commercial activities.
>
> In this case, A and B are closely related corporations under the existing closely related group rules in section 128. Therefore, the two corporations constitute a "qualifying group" under the new definition of that term in subsection 156(1).

Corporation A is closely related to AB partnership because of subparagraph 156(1.1)(*b*)(iii) given that corporation A and corporation B together hold all or substantially all of the interest in AB partnership. The same rule makes corporation B closely related to AB partnership as well. Therefore, corporation A, corporation B and AB partnership are members of one qualifying group.

Also, AB partnership and the newly formed partnership are closely related according to subparagraph 156(1.1)(*a*)(i). This is because all or substantially all of the interest in the new partnership is held collectively by the members of the group consisting of AB partnership and corporations A and B (which are members of a qualifying group of which AB partnership is a member) and given that AB partnership, corporation A and corporation B are all members of the new partnership.

Therefore, corporation A, corporation B, partnership AB and the new partnership are all members of one qualifying group each member of which is closely related to every other member.

Subsection 156(1.2) Persons Closely Related to the Same Person

New subsection 156(1.2) provides that, where two persons are closely related to the same person (or would be if the residency requirements were met by that same person), the two persons are considered closely related to each other for the purposes of section 156. For example, assume XYZ, a Canadian partnership, owns all the voting shares of X, a non-resident corporation and X owns all the voting shares of Y, a corporation resident in Canada. Assume further that X and Y corporations and XYZ partnership are GST/HST registrants. Since both XYZ and Y would be closely related to X if X were a corporation resident in Canada, subsection 156(1.2) deems XYZ partnership to be closely related to corporation Y.

Subsection 156(1.3) Interest in a Partnership

New subsection 156(1.3) provides that a person, or a group of persons, holds all or substantially all of the interest in a partnership at any time if:

- the person, or every member of the group, is a member of the partnership at that time;

- the person, or the group members collectively, as the case may be, is or are entitled to receive at least 90% of both the partnership's income for the relevant fiscal period of the partnership and the total amount that would be paid (otherwise than as a share of income) to members of the partnership if it were wound up; and

- the person or the group, as the case may be, is able to direct the business and affairs of the partnership.

Subsection 156(1.3) also provides a special rule in circumstances where the partnership did not have income in its last fiscal period (or did not have income in its current fiscal period if that is its first fiscal period). The income entitlement test in these circumstances is based on the share of income to which the person or group, as the case may be, would be entitled if the income of the partnership from each of its sources were one dollar. This test recognizes the fact that a partnership can have a different income sharing arrangement for each source of income of the partnership.

Another situation that is contemplated in subsection 156(1.3) is where a secured creditor (e.g., a bank) holds a security interest in either the property of the partnership or an interest in the partnership. In that case, the secured creditor may be able to direct to some extent the business and affairs of the partnership. Subsection 156(1.3) applies the control test assuming no secured creditor of the partnership has such a security interest.

The reference to "garantie" in the French version of new subsection 156(1.3) is replaced, effective on the day on which this clause is assented to, with a reference to "droit en garantie". The latter expression corresponds to the defined term for "security interest", which is added to subsection 123(1) effective on that day.

Subsection 156(2) Election for Nil Consideration

The purpose of the amendments to section 156 is to extend the election under that section to "Canadian partnerships" that are "specified members" of a "qualifying group" (all as defined in amended subsection 156(1)). However, existing subsection 156(2) allows only corporations that are specified members of a closely related group to make the election. Therefore, subsection 156(2) is amended to replace the existing references to "closely related group" and "corporation" with references to members of a more broadly defined "qualifying group". Amended subsection 156(2) allows any two specified members of a qualifying group (two corporations, two Canadian partnerships, or a corporation and a Canadian partnership) to make the election.

Subsection 156(3) Cessation

Existing subsection 156(3) deals with the cessation of the election made under subsection 156(2) by specified members of a closely related group. The amendment replaces the existing references to a "closely related group" and "corporation" with references to members of a "qualifying group", which is more broadly defined in amended subsection 156(1) to include groups that include certain partnerships. Minor wording changes are also made to subsection 156(3) for clarification purposes only.

Clause 17

Natural Resources

ETA
162

Section 162 deals with the treatment of rights to explore for or exploit natural resources and related rights of entry or user, including rights to receive a royalty or profit interest relating to a resource.

Subclause 17(1)

Definitions

ETA
162(1)

Existing subsection 162(1) is renumbered as subsection 162(2) and new subsection 162(1) is added. New subsection 162(1) sets out definitions of terms used in new subsection 162(4) dealing with the exploration and development of mineral deposits under a farm-out agreement (also newly defined in subsection 162(1)).

"estimated reserves"

The term "estimated reserves" refers to estimated quantities of minerals that are, with reasonable certainty, recoverable under current economic and operating conditions, as demonstrated by geological and engineering data. The term "mineral" is defined in subsection 123(1) and includes, among other things, oil, natural gas and related hydrocarbons.

The term "estimated reserves" is relevant to the new definition "unproven property", also contained in subsection 162(1). Only the exploration and development of "unproven property" qualifies for the treatment under new subsection 162(4). The definitions of these terms are consistent with the concept of "unproven resource property" that applies for the purposes of the existing administration of the income tax in relation to farm-out arrangements of the sort contemplated by new subsection 162(4).

"farm-out agreement"

The term "farm-out agreement" refers to an agreement to which new subsection 162(4) applies. The term is used in the new definition "specified mining or well-site equipment", also found in subsection 162(1).

"natural resource right"

A "natural resource right" is defined for purposes of section 162 as a right to explore for or exploit a deposit of oil, natural gas or related

hydrocarbons or other minerals (as defined in subsection 123(1)). In this context, "natural resource right" also encompasses a right of entry or user relating to the forgoing and a right to receive resource royalties in respect of the production of the minerals. It includes such rights whether they are in respect of Crown land or are freehold rights.

"specified mining or well-site equipment"

The term "specified mining or well-site equipment" in relation to the exploration or development of unproven property under a farm-out agreement to which subsection 162(4) applies refers to certain equipment, installations and structures for use at a mine site or a well site. The definition is relevant for purposes of determining which transfers by the "farmee" (within the meaning of subsection 162(4)) qualify to be treated as having been made for nil consideration and therefore are not subject to GST/HST.

Equipment, installations and structures that are for use at a mine site are included in this definition if these are for use in the production of minerals and not in processing the minerals after production. Activities such as milling, smelting and refining are considered to be processing.

Similarly, equipment, installations and structures that are for use at a well site are included if these are for use in the production of minerals from the well, including the initial treatment of substances produced from the well to prepare such production for transportation. This does not include equipment or facilities for use in the refining of oil or the processing of natural gas. Also excluded is anything that serves or is intended to serve an existing well, or any new well, that is not drilled in the course of the exploration or development under the farm-out agreement in question.

"unproven property"

The term "unproven property" refers to real property for which estimated reserves of minerals have not been attributed. The term is relevant for the purposes of new subsection 162(4) dealing with "farm-out agreements". As noted in the commentary on the definition "estimated reserves" (also found in subsection 162(1)), these definitions are consistent with the concept of "unproven

resource property" that applies for the purposes of the existing administration of the income tax in relation to farm-out arrangements of the sort contemplated by new subsection 162(4).

The amendments to subsection 162(1) are effective January 1, 1991.

Subclause 17(2)

Exception

ETA
162(3)

Existing subsection 162(2) is renumbered as subsection 162(3). It is further amended to replace the existing reference to subsection (1) with a reference to subsection (2) as a consequence of the restructuring of section 162 under subclause 17(1).

This amendment is effective January 1, 1991.

Subclause 17(3)

Exploration and Development of Mineral Deposits

ETA
162(4)

New subsection 162(4) sets out rules for determining the GST/HST treatment of certain transactions under "farm-out agreements" that are entered into for the purpose of the exploration and potential development of real property for mineral deposits. A "farm-out agreement" refers to an agreement under which a person (the "farmor") grants to another person (the "farmee") a natural resource right (or portion thereof) relating to an unproven property (as defined in subsection 162(1)).

Under a farm-out agreement, the farmor receives in return the exploration of the property for mineral deposits and potentially the development of the property by the farmee (subject to such conditions as economic viability), as well as any information gathered by the farmee from the exploration. The agreement often further

contemplates a retention by the farmor of a gross overriding royalty interest that may be convertible at a later time into a working interest.

The farm-out agreement may also provide for ancillary transactions. For example, it might provide for the transfer from the farmee to the farmor of interests in certain mining or well-site equipment at some future time, usually in the case where the farmor ultimately obtains a working interest in the developed property. As another example, the agreement may provide for the transfer by the farmee to the farmor of such things as seismic information. In turn, the farmor might transfer a property or service other than the interest in the unproven property that is being explored, such as an interest in another property already developed.

Subsection 162(4) deals with trades of property or services between the farmor and farmee pursuant to the farm-out agreement. For GST/HST purposes, normally when a property or service is given as consideration for other property or services, the value of the consideration for one is the fair market value of the other. However, some trades under farm-out arrangements pose especially difficult valuation problems. New subsection 162(4) is intended to ease compliance with the GST/HST by removing the need to value certain properties and services exchanged as consideration under a farm-out agreement. However, to the extent that any monetary consideration is exchanged between the parties in respect of taxable supplies made under the agreement, the GST/HST applies in all cases to that monetary consideration in the usual manner.

Paragraphs 162(4)(*a*) and (*b*) together have the effect of avoiding having to value, for GST/HST purposes, what is referred to as the "farmee's contribution", which is the exploration and development services, the information (or right to it) gathered from the exploration and any specified mining or well-site equipment (as defined in amended subsection 162(1)). First, under paragraph (4)(*a*), any non-monetary consideration given by the farmor in return for the farmee's contribution is deemed to have a value of zero. If there were no additional monetary consideration given by the farmor for the farmee's contribution, the net effect would be that no tax would apply to the farmee's contribution. On the other hand, if there were some monetary consideration given by the farmor as well, tax on the farmee's contribution would be calculated on that consideration.

Similarly, by virtue of paragraph 162(4)(*b*), the farmee's contribution need not be valued for purposes of determining any tax on the property or services given by the farmor in exchange. This is achieved by deeming the value of the farmee's contribution as consideration for any property or service given by the farmor to be nil.

As noted, the farm-out agreement might provide that the farmor also trade something other than the interest in the unproven property for the exploration and development by the farmee. Paragraph 162(4)(*c*) deals with these other trades. It addresses the situation where the farmor trades property or a service (referred to as the "farmor's additional contribution") that is not a natural resource right in respect of any unproven property. In this case, the issue of valuation arises with respect to the calculation of the tax on the farmor's additional contribution.

Subparagraph 162(4)(*c*)(i) deems the farmee to have supplied a separate service to the farmor in consideration for the farmor's additional contribution. Under subparagraph (4)(*c*)(ii), both sides of the transaction are deemed to have a value equal to the fair market value of the farmor's additional contribution. Therefore, assuming the supply of the farmor's additional contribution is a taxable supply, the farmor, if a registrant, will be required to charge the farmee tax calculated on that fair market value. The farmee, in turn, will be required to charge the farmor tax on that same value. The consideration is considered to become due (and therefore the tax in both cases becomes payable or collectible) at the "time of transfer" referred to in subparagraph (4)(*c*)(ii).

As an example, suppose a GST/HST-registered farmor transfers ownership of equipment to the farmee in addition to supplying the interest in the unproven property being explored, in return for which the farmee undertakes the exploration. The farmor has to charge the farmee tax on the fair market value of the equipment. The tax becomes collectible at the time ownership of the equipment is transferred to the farmee. The farmee, in turn, must charge the farmor an equivalent amount of tax on the deemed supply of a service. The rate of tax charged will depend on where the unproven property is situated. The rate will be 15% if that property is situated in an HST-participating province and 7% otherwise.

If the farmee also supplies a property or service other than what is defined as the "farmee's contribution" in return for the farmor's additional contribution, the tax that the farmee must charge the farmor on that other property or service is calculated on only the amount, if any, by which its value exceeds the fair market value of the farmor's additional contribution. This reflects the fact that the farmee is already required to charge the farmor tax calculated on the fair market value of the farmor's additional contribution.

For example, suppose a GST/HST-registered farmor sells equipment to a farmee with a fair market value of $8000 in return for the exploration and development by the farmee and a processing service to be performed by the farmee that would normally cost $10,000. The farmor must charge the farmee tax calculated on $8000. In turn, because the farmee is deemed to supply a service to the farmor for the same value of consideration, the farmee must charge the farmor tax calculated on $8000.

The farmee must also charge the farmor tax on the processing service actually supplied. However, the tax on the processing service is calculated on only $2000 (the amount by which the value of the service exceeds the value of the equipment).

The total tax that the farmee must charge the farmor is therefore calculated on a total of $10,000 (the fair market value of the processing service). Consequently, with respect to these ancillary supplies of property or services between the farmor and the farmee, each party charges tax on the fair market value of what they supply and pays tax on the fair market value of what they receive in return.

New subsection 162(4) is added retroactive to January 1, 1991, except that paragraph (*c*) of that subsection applies only to farm-out agreements entered into after August 7, 1998.

Clause 18

Conventions Attended by Non-residents

ETA
167.2

Section 167.2 provides that, when the sponsor of a convention is required to charge tax on convention fees, the sponsor can exclude from the calculation of the tax on admission fees charged to non-resident attendees the portion of that fee that is attributable to the provision of the convention facility or other expenses referred to as "related convention supplies" (defined in subsection 123(1)). The amendment to section 167.2 extends the existing relief by allowing the sponsor to exclude from the calculation of the tax charged to the non-resident attendees 50% of the portion of their admission fee that is reasonably attributable to food, beverages and catering services. A related amendment adds the latter items to the definition "related convention supplies" in subsection 123(1).

This amendment applies to any convention held after Announcement Date if no admissions to that convention have been sold on or before that day.

Clause 19

Restricted Credit for Selected Listed Financial Institutions

ETA
169(3)(*a*)

Subsection 169(3) restricts a person from claiming input tax credits in respect of the provincial component of the HST that becomes payable at a time when the person is a "selected listed financial institution", within the meaning of subsection 225.2(1). This term generally refers to the traditional types of financial institutions (e.g., banks, trust companies and insurance companies) that allocate income to both an HST participating province and a non-participating province for income tax purposes.

Selected listed financial institutions are restricted in the claiming of input tax credits for the provincial component of the HST because, generally, they are entitled to a special deduction for all the provincial component of the HST paid or payable by them in determining their net tax in accordance with the rules set out in section 225.2. Under those rules, the institution then adds to its net tax a calculated amount attributable to the provincial component of the HST.

However, selected listed financial institutions are not entitled to claim the special deduction in respect of prescribed amounts of tax. For example, the 8% component of the HST paid on certain inputs related to the settlement of property and casualty insurance claims is excluded from the adjustment to net tax calculated under section 225.2. Also, as proposed on October 8, 1998, prescribed amounts of tax would include the provincial component of the HST paid on certain inputs related to the carrying on of construction by a surety in satisfaction of its obligations under a construction performance bond to which new section 184.1 applies. Instead of including the prescribed amounts of tax in the net tax adjustment, the intention is that these institutions be entitled to recover that tax as input tax credits to the extent that the inputs to which the tax relates are for use in commercial activities. Therefore, the amendment to subsection 169(3) removes prescribed amounts of tax from the input tax credit restriction.

In the case of expenses of an insurer related to the settlement of property and casualty insurance claims, input tax credits are allowed to the extent that the settlement is made in the course of commercial activities of the insurer (e.g., where the insurance policy is that of a non-resident person and relates to risks that are ordinarily situated outside Canada). In the case of the expenses incurred by a surety, input tax credits are allowed in respect of inputs used exclusively and directly in the course of carrying on the construction undertaken in satisfaction of its obligations under the performance bond (see commentary on new subsection 184.1(2)).

The amendment to subsection 169(3) is effective April 1, 1997.

Clause 20

Definitions "sales aid" and "applicable provincial tax"

ETA
178.1

Section 178.1 sets out definitions of terms used in sections 178.2 to 178.5, which provide special rules relating to transactions by direct selling organizations and their independent sales contractors. The term "sales aid" is relevant for purposes of subsections 178.5(5) and (6). These subsections ensure that supplies of the items defined as sales aids made between independent sales contractors, and between the direct sellers and the contractors, are not subject to GST/HST.

The definition "sales aid" is amended to include shipping, handling and order processing services relating to exclusive products of the direct seller or to items included in the existing definition of "sales aid". This amendment applies to amounts that become due after February 24, 1998 and are not paid on or before that day.

Section 178.1 is also amended, effective February 24, 1998, to add the definition "applicable provincial tax", which is referred to and defined in each of existing sections 178.3 and 178.4. The definition is moved to section 178.1 to avoid repetition and is unchanged.

Clause 21

Direct Sellers Accounting for Tax

ETA
178.3

Where a direct seller has made an election under subsection 178.2(1), the direct seller calculates its net GST/HST liability as if all sales of exclusive products of the direct seller to final purchasers were made, for the suggested retail price of those products, by the direct seller

rather than through the independent sales contractors further down the chain.

New subsection 178.3(7) provides bad debt relief in respect of bad debts relating to an account receivable of an independent sales contractor (ISC) of a direct seller on a sale to a final purchaser. The direct seller is entitled to the bad debt deduction if the tax on the sale was accounted for by the direct seller as if the sale had been made by the direct seller instead of the ISC. The direct seller may claim a deduction in determining its net tax where it has paid or credited the amount of the deduction to an ISC who has written off the bad debt in the ISC's books of account. The allowable deduction is calculated on the basis of a formula similar to that used by other registrants in claiming bad debt relief under section 231.

Similar to the general rules under section 231, new subsection 178.3(8) provides that the direct seller who has taken a bad debt deduction is required to add an amount to its net tax in respect of any subsequent recovery of all or part of the bad debt.

New subsections 178.3(7) and (8) apply to bad debts relating to supplies made after February 24, 1998.

Clause 22

Distributors of Direct Sellers

ETA
178.4

Where a distributor of a direct seller has jointly elected under subsection 178.2(2) with the direct seller, the distributor calculates its net GST/HST liability as if all sales of exclusive products of the direct seller to final purchasers were made, for the suggested retail price of those products, by the distributor rather than through the independent sales contractors further down the chain.

New subsection 178.4(7) provides bad debt relief in respect of bad debts relating to an account receivable of an independent sales contractor (ISC) on a sale to a final purchaser in circumstances where the tax on the sale was accounted for as if the sale were made by the

distributor instead of the ISC. The distributor may claim a deduction in determining its net tax where it has paid or credited the amount of the deduction to an ISC who has written off the bad debt in the ISC's books of account. The allowable deduction is calculated on the basis of a formula similar to that used by other registrants in claiming bad debt relief under section 231.

Similar to the general rules under section 231, new subsection 178.4(8) provides that a distributor who has taken a bad debt deduction is required to add an amount to its net tax in respect of any subsequent recovery of all or part of the bad debt.

New subsections 178.4(7) and (8) apply to bad debts relating to supplies made after February 24, 1998.

Clause 23

Designated Charities

ETA
178.7

Most services supplied by charities are exempt under the general exemption for charities provided in section 1 of Part V.1 of Schedule V. New section 178.7 permits eligible charities to apply to the Minister of National Revenue to be designated for the purposes of excluding from this general exemption supplies of services to GST/HST-registered customers. The charity is then in a position to claim input tax credits in respect of related inputs. The charity's registered customers, in turn, are able to claim input tax credits for the tax payable in respect of the charity's services to the extent that those services are acquired for use in commercial activities. Charities that qualify for this designation must have as one of their main purposes the provision of employment or employment-related assistance to individuals with disabilities.

Designation under new section 178.7 does not affect supplies by the designated charity of services, such as educational or health care services, that are specifically exempt under provisions other than section 1 of Part V.1 of Schedule V. Moreover, the charity's services of providing care and employment-related assistance for individuals

with disabilities remain exempt when supplied to a public sector body or to a board, commission or other body established by a government or a municipality.

Related amendments to sections 225.1 and 227 exclude the designated charity from the requirement to use the special net tax formula for charities under section 225.1 and instead permit the charity to elect to use the streamlined accounting method prescribed under section 227 for public service bodies (i.e., the "Special Quick Method").

New section 178.7 is deemed to have come into force on February 24, 1998 and applies to supplies by charities made in reporting periods beginning after that day.

Subsection 178.7(1) Meaning of "specified service"

Subsection 178.7(1) defines the term "specified service" for purposes of subsection 178.7(2) and new paragraph (*d*.1) of section 1 of Part V.1 of Schedule V. Specified services supplied to registrants by a charity that is designated under subsection 178.7(3) are excluded from the general exemption under that section of Part V.1 of Schedule V.

A "specified service" refers to any service supplied by a designated charity except the provision of care and employment-related assistance for individuals with disabilities when supplied to certain bodies. Specifically, the care, employment or training for employment of individuals with disabilities, employment placement services rendered to such individuals, and the provision of instruction to assist such individuals in securing employment remain exempt if they are supplied by the designated charity to a public sector body (as defined in subsection 123(1)) or to a board, commission or other body established by a government or a municipality.

Subsection 178.7(2) Charity Supplying Specified Service

Subsection 178.7(2) sets out the criteria that must be met in order for a charity to be eligible to apply for a designation by the Minister of National Revenue for purposes of new paragraph 1(*d*.1) of Part V.1 of Schedule V. The effect of being designated is that the charity's supplies of "specified services" (defined in new subsection 178.7(1))

are excluded from the general exemption under section 1 of that Part when supplied to a registrant.

To qualify for designation, one of the main purposes of the charity must be the provision of employment, training for employment or employment placement services for individuals with disabilities or the provision of instructional services to assist such individuals in securing employment. The charity must also supply, on a regular basis, other services that are performed, in whole or in part, by individuals with disabilities.

Subsection 178.7(3) Designation by the Minister

Subsection 178.7(3) provides the authority for the Minister of National Revenue to designate a charity for the purposes of paragraph 1(*d*.1) of Part V.1 of Schedule V.

Subsection 178.7(4) Revocation of Designation

Subsection 178.7(4) provides that the Minister of National Revenue may revoke the designation of a charity where the charity no longer satisfies the conditions for designation described in paragraphs 178.4(2)(*a*) and (*b*). The Minister can also revoke the designation if the charity so requests, provided that the designation had been in effect for at least one year.

Clause 24

Coupons

ETA
181

Section 181 sets out rules pertaining to coupons that offer price discounts or that may be redeemed for property or services.

Subclause 24(1)

Definition "coupon"

ETA
181(1)

The definition "coupon" in subsection 181(1) is amended to exclude a "barter unit" within the meaning of new subsection 181.3(1).

This amendment applies for the purpose of applying section 181 on and after December 10, 1998 and also for the purpose of applying that section, to anything accepted or redeemed as a "coupon" before that day, in determining any rebate under subsection 261(1), or any input tax credit or deduction, claimed on or after that day.

Subclause 24(2)

Treatment as Tax-excluded Coupon

ETA
181(4)

Existing subsection 181(4) provides for the treatment of a coupon value as a tax-excluded amount. In contrast, subsection 181(2) provides for the treatment of a coupon value as a tax-included amount when the vendor who accepts the coupon expects to receive reimbursement from a third party who will redeem the coupon. The two provisions are intended to be mutually exclusive. Therefore, existing subsection 181(4) contains the condition that it applies only where subsection (2) does not apply. A vendor who issues its own coupons can choose to treat them the same as if they were reimbursable, in which case, only paragraphs (2)(*a*) to (*c*) apply. The reference in subsection 181(4) to the condition that "subsection (2)" does not apply is therefore replaced with the more precise reference to the condition that "paragraphs (2)(*a*) to (*c*)" do not apply. This amendment is effective April 1, 1997.

Subclause 24(3)

Treatment as Tax-included Coupon

ETA
181(5)

Subsection 181(5) addresses situations where a coupon value is treated as a tax-included amount. It permits a person who redeems the coupon from a vendor who accepted it to claim an input tax credit in respect of the tax amount included in the total amount redeemed.

Existing subsection 181(5) contains a reference to both reimbursable fixed-price coupons and fixed-percentage coupons. However, fixed-percentage coupons are always treated as reducing the value of consideration for a supply and therefore the GST or HST applies to the price net of the coupon value. Since such a coupon is not treated as tax-included, there is no need to apply subsection 181(5) to it. This amendment therefore deletes the reference in that subsection to a coupon that provides for a price reduction equal to a fixed percentage of the price.

This amendment comes into force on April 1, 1997 but does not apply where an input tax credit in respect of a reimbursement of a fixed-percentage coupon has been claimed in a return that was received at a Revenue Canada office before November 26, 1997.

Clause 25

Barter Exchange Networks

ETA
181.3

A barter transaction occurs when two persons agree to a reciprocal exchange of goods or services. The practice of bartering has evolved into an industry that consists of member-only barter clubs or "networks". In order to facilitate trading among their members, most networks use what is commonly referred to as "barter units" like a medium of exchange. Barter units, however, do not fit the definition

of "money". Therefore, the provision of a barter unit is a supply of an intangible personal property.

New section 181.3 provides for the designation of barter exchange networks and the GST/HST treatment of transactions involving the provision of barter units.

Subsection 181.3(1) Definitions

Subsection 181.3(1) defines terms that are used in new section 181.3. The "administrator" of a barter exchange network is defined to be the person who is responsible for administering, maintaining or operating, for members of the network, a system of accounts to which barter units may be credited.

A "barter exchange network" is defined as a group of persons who have agreed in writing to accept credits (referred to as "barter units") on accounts of the group members in exchange for property or services traded among the members. It should be noted that the criterion that the barter unit "can" be used as consideration for property or services supplied by other members of the network does not preclude the possibility that the barter units may also be used in trades with members of another barter group.

Each barter group that has its own administrator is a separate "barter exchange network" within the definition of that term. In other words, if a group of persons having a particular administrator agree to trade property or services for barter units, not only among themselves, but also with members of another group having a different administrator, the two groups are treated as separate barter exchange networks for the purposes of section 181.3. Therefore, each administrator would have to apply for a separate designation.

Subsections 181.3(2) to (4) Designation of Barter Exchange Network

Subsection 181.3(2) permits the administrator of a barter exchange network to apply in prescribed form and manner to have the network designated for the purposes of applying the rule in subsection 181.3(5) to the network members' transactions involving barter units. The requirement to apply to be designated is provided for the purposes of clearly establishing the intention of the group to be treated as a barter exchange network under subsection 181.3(5) since

barter exchange networks are not otherwise clearly defined nor are they legal entities in themselves.

Where the Minister of National Revenue designates a barter exchange network, the Minister must notify the administrator of the network in writing of the designation and its effective date. The administrator is then obligated to notify the members of the network.

Subsection 181.3(5) Exchange of Barter Unit

The effect of new subsection 181.3(5) is to relieve members of designated barter exchange networks from having to pay tax on barter units accepted in exchange for their supplies of property or services. Of course the members, if registrants, continue to have to charge tax on their taxable supplies of the property or services provided for the barter units. The tax on such property or services is calculated on the exchange value of the barter units accepted as consideration.

For example, if a registrant who is a member of a designated barter exchange network provides another registrant who is also a member of the network professional legal services in exchange for barter units having an exchange value of $100, the member supplying the service would have to charge tax calculated on $100. The member receiving the services would not have to charge tax on the provision of the barter units since subsection 181.3(5) deems the barter units to be supplied for nil consideration. When the member accepting the barter units as consideration in turn uses them as consideration for property or services acquired from another member, the barter units themselves will again be free of tax but tax will be payable on the supply of the property or service acquired provided it is a taxable supply made by a registrant.

New subsection 181.3(5) also relieves any person (such as an out-going member) from having to collect tax on "cashing in" a barter unit by supplying it for money to a member or administrator of a designated network.

The only time that a member of a designated network has to charge tax on a supply of a barter unit is if the barter unit were supplied to any person that is not a member, or administrator, of a designated barter exchange network.

It should be noted that this provision applies to the exchange of barter units that "can" be used as consideration for property or services traded among members of a particular designated barter exchange network. Such a barter unit still qualifies for the treatment under subsection 181.3(5) even if it is ultimately given as consideration for property or services supplied by a member of another network.

Subsection 181.3(6) Deemed Non-financial Services

For greater certainty, subsection 181.3(6) deems the following not to be financial services:

(a) the operation, maintenance or administration of a system of accounts, to which barter units can be credited, of members of a barter exchange network,

(b) the crediting of a barter unit to such an account,

(c) the supply, receipt or redemption of a barter unit, and

(d) the agreeing to provide, or the arranging for, any of the foregoing.

It should be noted that the deeming under subsection 181.3(6) applies whether or not the barter exchange network referred to therein is designated under section 181.3.

Application of New Section 181.3

New section 181.3 is deemed to have come into force on December 10, 1998. Therefore, the deeming rule under new subsection 181.3(6) applies as of that day, since that subsection does not depend on the designation of a barter exchange network. However, in the absence of any transitional rule, new subsection 181.3(5) would have practical effect for a barter exchange network only from the day on which a designation of the network is made (the earliest such day being the day on which new section 181.3 is assented to). To allow subsection 181.3(5) to also apply to transactions occurring before that day, a special transitional rule is provided under subclause 25(3).

Revenue Canada may designate a barter exchange network effective the day on which new section 181.3 is assented to. Subclause 25(3) provides that, if on an earlier day, the network's members exchange property or services for barter units, the exchange is treated as if the designation and section 181.3 had been in effect on that earlier day provided that no amount as or on account of tax was actually collected in respect of the supply of the barter unit.

Clause 26

Seizures and Repossessions

ETA
183

Section 183 provides rules for the application of the GST/HST to property seized or repossessed by a creditor.

Subclauses 26(1) and (2)

Use of Personal Property Seized or Repossessed after 1993

ETA
183(6)(*a*)(ii)

Subsection 183(6) sets out rules applicable to personal property that is seized or repossessed by a creditor after 1993 and is subsequently appropriated for the creditor's own use. This subsection provides that a creditor is deemed to have received a supply of the property immediately after the appropriation and to have paid tax calculated on the basis of the fair market value of the property.

The creditor is also deemed to have made a supply and collected tax if the property was seized or repossessed in Canada from a person who would have had to charge tax if the property had instead been supplied to the creditor. Normally, such a person would have been in a position to claim an input tax credit in respect of that person's last acquisition of the property. Therefore it is presumed that there was no non-recovered tax that had been paid on the property.

Subject to an exception for specified tangible personal property (as defined in subsection 123(1)), the effect of subsection 183(6) is to allow the creditor to claim an input tax credit to the extent that the property is used by the creditor in a commercial activity. In the circumstance where it is presumed that there is no non-recovered tax that had been paid by the debtor, the net effect of deeming the creditor to have both paid and collected tax on the appropriation is that the creditor must add an amount to its net tax to the extent that the property is not for use by the creditor in commercial activities.

Under clauses (A) and (B) of the description of element A of the formula in subparagraph 183(6)(*a*)(ii), the tax that the creditor is deemed to have paid is calculated based on the rate of 7% or 15%, depending on where the property is situated at the time of the appropriation. This yields an inappropriate result if the property would have been taxable at the rate of 0% if it had been purchased by the creditor. The amendment under subclause 26(1) therefore ensures that no tax is considered to have been paid by the creditor on the appropriation of the property in that circumstance. This amendment is effective April 1, 1997.

Under paragraph 183(6)(*b*), which applies where the creditor is also deemed to have collected tax on the appropriation of the property, that tax is calculated based on a rate of 15% in all cases where the appropriation occurs in an HST participating province. However, the tax that the creditor is at the same time deemed to have paid is computed under the formula in existing subparagraph 183(6)(*a*)(ii) based on a rate of only 7 % if the property was seized or repossessed before April 1, 2000. This unintentionally results in a net addition to the creditor's net tax (i.e., the payment of non-recoverable tax) even if the creditor were to use the property exclusively in commercial activities.

The intent of the HST transitional rules in these particular circumstances is to deem an amount of tax to have been paid equal to the amount deemed to have been collected. The amendment under subclause 26(2) to clause (A) of the description of element A of the formula is intended to achieve this result by deeming the creditor to have paid tax based on the rate of 7% where the creditor is not also deemed to have collected tax (i.e., where the creditor would not have had to pay tax if the creditor had purchased the property from the

debtor). The creditor is otherwise deemed to have paid tax based on the rate of 15 per cent. This amendment is effective April 1, 1997.

Clause (A) of the description of element A of the formula is also amended to clarify the reference to when the seizure or repossession takes place. The existing reference is to property seized or repossessed "within three years after the implementation date" (*i.e.*, April 1, 1997) of a participating province. The intention is to refer to any property seized or repossessed before April 1, 2000. Therefore, the amended clause uses the more precise expression "before the day that is three years after the implementation date".

Subclauses 26(3) and (4)

Sale of Personal Property that has Been Seized or Repossessed

ETA
183(7)

Subsection 183(7) applies where a creditor sells property that was previously seized or repossessed by the creditor and was not appropriated for the creditor's own use. In certain circumstances (under which it is presumed there would have been some non-recovered tax paid by the debtor), paragraph 183(7)(*c*) deems the creditor to have received a supply of the property immediately before such a sale and paragraph 187(7)(*d*) deems the creditor to have paid tax. This is for the purpose of permitting the creditor to claim an input tax credit to avoid double tax on the property when it is sold by the creditor.

Amended paragraph 183(7)(*c*) clarifies that the supply deemed to have been received by the creditor is a supply by way of sale. This amendment is effective April 1, 1997.

Amended paragraph 183(7)(*d*) provides that no tax is considered to have been paid by the creditor where the supply deemed to have been received by the creditor under paragraph 183(7)(*c*) is a zero-rated supply. As a result, no input tax credit is available in these circumstances, which is appropriate as there would not have been any non-recovered tax on the property. This change is effective April 1, 1997.

Existing paragraph 183(7)(*d*) refers to property seized or repossessed "within three years after the implementation date" (*i.e.*, April 1, 1997) of a participating province. The intention is to refer to any property seized or repossessed before April 1, 2000. Amended paragraph 183(7)(*d*) therefore uses the more precise expression "before the day that is three years after the implementation date".

Finally, under existing paragraph 183(7)(*d*), if the creditor seized or repossessed the property on or after April 1, 2000 in an HST participating province and re-supplies the property outside Canada, the amount of tax that the creditor is deemed to have paid is computed based on a rate of 15 per cent. As a result, the creditor is entitled to claim an input tax credit in respect of the provincial component of the HST.

However, if instead the creditor sells and delivers the property for export from a non-participating province on a zero-rated basis, the creditor is deemed to have paid tax based on a rate of only 7% and is therefore denied an input tax credit in respect of the provincial component of the HST. This is not the intended result. The tax treatment of exports of personal property seized or repossessed is intended to be the same regardless of whether the property is exported directly from a participating province or sold into a non-participating province from which it is exported.

Amended paragraph 183(7)(*d*) ensures that a creditor may claim an input tax credit for the provincial component of the HST in these circumstances. This is accomplished by excluding from subparagraph (i) of the description of element A of the formula in that paragraph the circumstance where the creditor's supply is a zero-rated supply made in a non-participating province. That circumstance therefore instead falls within the ambit of subparagraph (ii) of the description of element A, under which the tax deemed to have been paid by the creditor is computed based on a rate of 15 per cent. This amendment is effective April 1, 1997.

Subclauses 26(5) to (7)

Lease of Personal Property that has been Seized or Repossessed

ETA
183(8)

Subsection 183(8) provides the rules applicable to personal property that is seized or repossessed by a creditor from a person who would not have had to charge tax (e.g., a consumer) and is subsequently supplied by the creditor by way of lease, licence or similar arrangement without having been appropriated for the creditor's own use. This subsection deems the creditor to have received a supply of the property and to have paid tax immediately before the creditor's re-supply of the property. This therefore enables the creditor to claim an input tax credit to avoid double tax on the property when it is re-supplied since it is presumed that the debtor would have incurred some non-recoverable tax on the property.

The amendment to the preamble to subsection 183(8) clarifies that the creditor is deemed to have received the supply and paid the tax immediately before the supply by way of lease, licence or similar arrangement by the creditor for the first lease interval (within the meaning of subsection 136.1(1)) in respect of the arrangement is made. This clarification is necessary because of the rule in the latter subsection that deems a separate supply of the property for each payment period (referred to as a "lease interval") under the arrangement. This amendment applies to lease intervals that begin after March 1997. At the same time, the reference to a "particular time" is added consistent with the use of that expression elsewhere in the subsection.

In addition, similar changes are made to paragraphs 183(8)(*c*) and (*d*) as those described above to paragraph 183(7)(*c*) and subparagraphs (i) and (ii) of the description of element A of the formula in paragraph 183(7)(*d*), respectively. In these particular provisions, the rules are identical except that subsection 183(7) deals with re-supplies by the creditor by way of sale and subsection 183(8) deals with re-supplies by way of lease, licence or similar arrangement. These amendments to paragraphs 183(8)(*c*) and (*d*) are effective April 1, 1997.

Clause 27

Property Transferred to Insurer on Settlement of Claim

ETA
184

Section 184 provides rules for the application of the GST/HST to property transferred to an insurer on the settlement of a claim.

Subclauses 27(1) and (2)

Use of Personal Property Transferred after 1993

ETA
184(5)(*a*)(ii)

Subsection 184(5) sets out the rules applicable to personal property that is transferred after 1993 to an insurer on the settlement of an insurance claim and is subsequently appropriated for the insurer's own use. This subsection provides that the insurer is deemed to have received a supply of the property immediately after the appropriation and to have paid tax calculated on the basis of the fair market value of the property.

The insurer is also deemed to have made a supply and collected tax if the property was transferred from a person who would have had to charge tax if the property had instead been purchased by the insurer. Normally, such a person would have been in a position to claim an input tax credit in respect of that person's last acquisition of the property. Therefore it is presumed that there was no non-recovered tax that had been paid on the property.

Subject to an exception for specified tangible personal property (as defined in subsection 123(1)), the effect of subsection 184(5) is to allow the insurer to claim an input tax credit to the extent that the property is used by the insurer in a commercial activity. In the circumstance where it is presumed that there is no non-recovered tax that had been paid by the person from whom the property was transferred, the net effect of deeming the insurer to have both paid and collected tax on the appropriation is that the insurer must add an

amount to its net tax to the extent that the property is not for use by the insurer in commercial activities.

Under existing clauses (A) and (B) of the description of element A of the formula in subparagraph 184(5)(*a*)(ii), the tax that the insurer is deemed to have paid is calculated based on the rate of 7% or 15%, depending on where the property is situated at the time of the appropriation. This yields an inappropriate result if the property would have been taxable at the rate of 0% if it had been purchased by the insurer. The amendment under subclause 27(1) therefore ensures that no tax is considered to have been paid by the insurer on the appropriation of the property in that circumstance. This amendment is effective April 1, 1997.

Under paragraph 184(5)(*b*), which applies where the insurer is also deemed to have collected tax on the appropriation of the property, that tax is calculated based on the rate of 15% in all cases where the appropriation occurs in an HST participating province. However, the tax that the insurer is at the same time deemed to have paid is computed under the formula in existing subparagraph 184(5)(*a*)(ii) based on the rate of only 7% if the property were transferred to the insurer before April 1, 2000. This unintentionally results in a net addition to the insurer's net tax (i.e., the payment of non-recoverable tax) even if the insurer were to use the property exclusively in commercial activities.

The intent of the HST transitional rules in these particular circumstances is to deem an amount of tax to have been paid equal to the amount deemed to have been collected. The amendment under subclause 27(2) to clause (A) of the description of element A of the formula is intended to achieve this result by deeming the insurer to have paid tax based on the rate of 7% where the insurer is not also deemed to have collected tax (i.e., where the insurer would not have had to pay tax if the insurer had purchased the property from the person from whom the property was transferred). The insurer is otherwise deemed to have paid tax based on the rate of 15 per cent. This amendment is effective April 1, 1997.

Clause (A) of the description of element A of the formula is also amended to clarify the reference to when the transfer of the property to the insurer takes place. The existing reference is to property transferred "within three years after the implementation date" (i.e.,

April 1, 1997) of a participating province. The intention is to refer to any property transferred before April 1, 2000. Therefore, the amended clause uses the more precise expression "before the day that is three years after the implementation date".

Subclauses 27(3) and (4)

Sale of Personal Property that has been Transferred to Insurer

ETA
184(6)

Subsection 184(6) applies where an insurer sells property that was previously transferred to the insurer on the settlement of an insurance claim and was not appropriated for the insurer's own use. In certain circumstances (under which it is presumed there would have been some non-recovered tax paid by the transferor), paragraph 184(6)(*c*) deems the insurer to have received a supply of the property immediately before such a sale and paragraph 184(6)(*d*) deems the insurer to have paid tax. This is for the purpose of permitting the insurer to claim an input tax credit to avoid double tax on the property when it is sold by the insurer.

Amended paragraph 184(6)(*c*) clarifies that the supply deemed to have been received by the insurer is a supply by way of sale. This amendment is effective April 1, 1997.

Amended paragraph 184(6)(*d*) provides that no tax is considered to have been paid by the insurer where the supply deemed to have been received by the insurer under paragraph 184(6)(*c*) is a zero-rated supply. As a result, no input tax credit is available in these circumstances, which is appropriate as there would not have been any non-recovered tax on the property. This change is effective April 1, 1997.

Existing paragraph 184(6)(*d*) refers to property transferred to the insurer "within three years after the implementation date" (*i.e.*, April 1, 1997) of a participating province. The intention is to refer to any property transferred before April 1, 2000. Amended paragraph 184(6)(*d*) therefore uses the more precise expression "before the day that is three years after the implementation date".

Finally, under existing paragraph 184(6)(*d*), if the property was transferred to the insurer on or after April 1, 2000 in an HST participating province and the insurer re-supplies the property outside Canada, the amount of tax that the insurer is deemed to have paid is computed based on the rate of 15 per cent. As a result, the insurer is entitled to claim an input tax credit in respect of the provincial component of the HST.

However, if instead the insurer sells and delivers the property for export from a non-participating province on a zero-rated basis, the insurer is deemed to have paid tax based on the rate of only 7% and is therefore denied an input tax credit in respect of the provincial component of the HST. This is not the intended result. The tax treatment of exports of personal property transferred to an insurer is intended to be the same regardless of whether the property is exported directly from a participating province or sold into a non-participating province from which it is exported.

Amended paragraph 184(6)(*d*) ensures that an insurer can claim an input tax credit for the provincial component of the HST in these circumstances. This is accomplished by excluding from subparagraph (i) of the description of element A of the formula in that paragraph the circumstance where the insurer's supply is a zero-rated supply made in a non-participating province. That circumstance therefore instead falls within the ambit of subparagraph (ii) of the description of element A, under which the tax deemed to have been paid by the insurer is computed based on the rate of 15 per cent. This amendment is effective April 1, 1997.

Subclauses 27(5) to (7)

Lease of Personal Property that has been Transferred to Insurer

ETA
184(7)

Subsection 184(7) provides rules applicable to personal property that is transferred to an insurer on the settlement of an insurance claim from a person who would not have had to charge tax (e.g., a consumer). The subsection applies where the property is subsequently supplied by the insurer by way of lease, licence or similar arrangement without having been appropriated for the insurer's

own use. This subsection deems the insurer to have received a supply of the property and to have paid tax immediately before the insurer's re-supply of the property. This therefore enables the insurer to claim an input tax credit to avoid double tax on the property when it is re-supplied since it is presumed that the transferor would have paid some non-recoverable tax on the property.

The amendment to the preamble to subsection 184(7) clarifies that the insurer is deemed to have received the supply and paid the tax immediately before the supply by way of lease, licence or similar arrangement by the insurer for the first lease interval (within the meaning of subsection 136.1(1)) in respect of the arrangement is made. This clarification is necessary because of the rule in the latter subsection that deems a separate supply of the property for each payment period (referred to as a "lease interval") under the arrangement. This amendment applies to lease intervals that begin after March 1997. At the same time, the reference to a "particular time" is added consistent with the use of that expression elsewhere in the subsection.

In addition, similar changes are made to paragraphs 184(7)(*c*) and (*d*) as those described above to paragraph 184(6)(*c*) and subparagraphs (i) and (ii) of the description of element A of the formula in paragraph 184(6)(*d*), respectively. In these particular provisions, the rules are identical except that subsection 184(6) deals with re-supplies by the insurer by way of sale and subsection 184(7) deals with re-supplies by way of lease, licence or similar arrangement. These amendments to paragraphs 184(7)(*c*) and (*d*) are effective April 1, 1997.

Clause 28

Construction Performance Bonds

ETA
184.1

A "performance bond" is a three-party agreement constituting a type of guarantee given by the issuer of the bond (surety) to an obligee who has entered into a contract with a contractor (principal). The

surety agrees that, if the contractor defaults (i.e., fails to fully perform the contract), the surety will remedy that default.

There are various means by which a surety under a performance bond in respect of a construction contract can remedy a default. In some cases, the surety may step into the shoes of the defaulting contractor and carry on the construction. New section 184.1 deals with that case.

Overall Treatment

A construction performance bond, in essence, protects against the risk of the principal defaulting. In fact, the bond is included in the definition of "insurance policy" for the purposes of the GST/HST. The payment of an amount in satisfaction of a claim arising under an insurance policy is part of a financial service and therefore generally an exempt activity. However, the case dealt with under section 184.1 is complicated by the fact that performance of the original contract for the taxable supply of construction services was not completed and the surety is stepping into the shoes of the principal.

Section 184.1 is intended, firstly, to ensure that the obligee, as a recipient of construction services, is in the same position of having to pay tax on any contract payments still owing after the surety steps in as would have been the case if the principal had not defaulted. Further, it ensures that the inputs directly related to the construction carried on by the surety (normally consisting of contractors' services) are eligible for input tax credits to the extent that the obligee must pay tax on the services produced with the use of those inputs. However, the excess of input costs to complete the remaining construction over the contract payments owing to the surety that relate to that remaining construction represents, in essence, the cost or risk that the obligee has "insured" against. It is the cost that the obligee would otherwise have suffered if not for the bond. Conceptually, this could be viewed as the value of the exempt insurance claim settlement. Therefore, the total of the surety's input tax credits in respect of the direct inputs (and amounts that would be input tax credits if the surety were required to pay tax on the direct inputs) is capped at the amount equal to tax calculated on the contract payments that the surety becomes entitled to receive from the obligee.

Scope of New Section 184.1

Section 184.1 applies to all persons who act as sureties under construction performance bonds. Therefore, it is not dependent on the person being licensed as a surety.

The section applies only to construction performance bonds relating to real property situated in Canada. Further, new subsection 184.1(1) ensures that section 184.1 applies to sureties whether carrying on the construction themselves or acquiring the services of contractors to carry on the construction for them. If, however, a contractor's services are acquired by the obligee, the surety is not considered to be carrying on the construction work undertaken by that contractor. For example, suppose the surety agreed only to pay a cash amount as a means of remedying the principal's default. However, assume that the surety arranged for the obligee to enter into a completion contract with a contractor to whom the surety would forward payments that were part of the surety's settlement with the obligee. Section 184.1 would not apply in that case.

Finally, section 184.1 applies only in relation to the "particular construction" that is carried on by the surety in full or partial satisfaction of the surety's obligations under the bond. Suppose, for example, the surety agrees to perform additional construction work (e.g., adding an extra wing that was not contemplated in the original contract for constructing a building). In that case, section 184.1 would not apply in respect of that additional construction except insofar as the surety acquires inputs used in both the construction undertaken in satisfaction of its obligations under the bond and in the additional construction. Section 184.1 contains rules, discussed further below, that affect the input tax credit entitlements of inputs used at least in part in the construction undertaken in satisfaction of the surety's obligations under the bond.

Taxable Supply by Surety

Paragraph 184.1(2)(*a*) ensures that, if the surety is entitled to receive, at any time, payments (referred to as "contract payments") from the obligee by reason of the surety's agreeing to carry on the construction, the surety is deemed to be engaged in making a taxable supply at all times at which it is carrying on that construction. This is for all purposes except determining the extent to which the intended

and actual consumption, use or supply of the surety's inputs occurs in the course of commercial activities (which paragraphs 184.1(2)(*b*) and (*c*) expressly deal with).

In many cases, the surety will be a "selected listed financial institution", within the meaning of subsection 225.2(1). Such financial institutions are subject to special rules (the "special attribution method") for determining their net tax. These rules are principally set out in section 225.2 and regulations under that section. The method also entails a special rule for determining certain rebates under Part IX (new section 263.01). To ensure that the new rule in paragraph 184.1(2)(*a*) does not give rise to any ambiguity or inconsistency with any of those provisions, new section 263.01 makes explicit reference to the satisfaction of the surety's obligations under a construction performance bond.

The main effect of paragraph 184.1(2)(*a*) is to ensure that tax is payable by the obligee in respect of the contract payments to which the surety becomes entitled, which are deemed to be consideration for the taxable supply made by the surety. The amounts deemed to be consideration do not include GST/HST or any provincial or local tax or fee that would otherwise be excluded from the GST/HST base. As well, to avoid double counting, if, through a subrogation for example, the surety is in receipt of an amount in respect of construction work that was undertaken by the principal (e.g., a holdback attributed to construction performed by the principal) and the GST/HST calculated on that amount is or was required to be included in determining the principal's net tax, the amount is not treated as consideration for the supply by the surety. Of course, if the surety actually collects any amount as or on account of tax, there is nevertheless the usual obligation on the surety to include that amount in the surety's net tax.

Section 184.1 applies only if the principal's supply of construction services are made in Canada. The taxable supply that the surety is deemed to be making is deemed to be made in Canada also. Furthermore, the place of the principal's supply determines whether the surety's supply is deemed to be made in or outside an HST participating province and therefore the rate at which tax applies to the surety's supply.

With respect to the taxable supply that the surety is considered to make, paragraph 184.1(2)(*a*) overrides the application of sections 150 and 156, as well as section 166. Section 166 deals with supplies by small suppliers who are not registrants. Therefore, regardless of whether the surety is a registrant, tax would be payable in respect of all payments made by the obligee to the surety by reason of the surety carrying on the particular construction in satisfaction of the surety's obligations under the bond. The surety would be required to collect and remit the tax that the obligee is required to pay.

General Rule for Inputs Attributable to the Carrying on of Construction by Surety

Paragraph 184.1(2)(*b*) ensures that the carrying on of the particular construction that is undertaken in full or partial satisfaction of the surety's obligations under the bond is not considered a commercial activity of the surety for the purposes of determining the extent to which the intended or actual consumption, use or supply of inputs is in the course of commercial activities. One effect of this paragraph is that the surety would have to self-assess tax if the surety received an imported taxable supply of an input for use in carrying on the particular construction. Principally, paragraph (2)(*b*) has the effect of denying the surety input tax credits in respect of inputs to the extent that they relate to the construction that is undertaken in satisfaction of the surety's obligations under the bond.

As discussed below, paragraph 184.1(2)(*c*) overrides paragraph (2)(*b*) with respect to certain direct inputs when the surety is considered under paragraph (2)(*a*) to be making a taxable supply. For the purposes of these rules and determining input tax credits that may be claimed, where a direct input is used both in construction undertaken in satisfaction of the surety's obligations under the bond and in additional construction, that part that is for use in the construction relating to the terms of the bond and the remaining part are each deemed, under subsection 184.1(3), to be a separate input acquired by the surety.

Exception for Certain Direct Inputs

Where the surety is deemed to be making a taxable supply, paragraph 184.1(2)(*c*) generally overrides paragraph (2)(*b*) with respect to inputs (other than capital property and improvements to

capital property) acquired, imported or brought into a participating province by the surety for consumption, use or supply exclusively and directly in the course of carrying on the particular construction that is in satisfaction of the surety's obligations under the bond. These inputs (referred to as "direct inputs") are deemed to have been acquired, imported or brought in exclusively in the course of commercial activities of the surety, except for the purposes of sections 155 and 156 and Divisions IV and IV.1.

Since paragraph (2)(*b*) is not overridden for the purposes of sections 155 and 156, the surety would be required to pay tax on supplies of direct inputs from related parties and members of a closely related group. Because of the exception for Divisions IV and IV.1, the surety would be subject to self-assessed tax on any imported taxable supplies of direct inputs or on direct inputs brought into an HST participating province.

The effect of paragraph (2)(*c*) is that the surety's input tax credits in respect of the direct inputs (including those to which tax under Division IV or IV.1 applied) would equal the tax payable on those inputs. However, the amount of those input tax credits that the surety would be entitled to actually claim in determining the surety's net tax would depend on the rule set out in paragraph (2)(*d*).

Cap on Input Tax Credits in respect of Direct Inputs

Under paragraph 184.1(2)(*d*), the total amount that the surety is entitled to claim as input tax credits in respect of direct inputs that are determined on the basis of the deeming rule in paragraph (2)(*c*) is capped at the amount equal to tax calculated on the total contract payments to which the surety becomes entitled from the obligee in respect of the construction carried on by the surety in satisfaction of the surety's obligations under the bond. The calculation of the cap also takes into account input tax that the surety would have incurred but for an election under section 150 or 167 or the fact that the surety was considered to have acquired the input for use exclusively in commercial activities (e.g., the tax that would have been payable but for the operation of section 155 or 156). In these circumstances, it is the total of the actual and imputed input tax credits that cannot exceed the amount equal to tax calculated on the total contract payments to which the surety becomes entitled.

It should be noted that the cap would normally be determinable on the basis of the actual tax collectible by the surety on contract payments to which the surety becomes entitled. However, tax may not actually be collectible if the obligee is, under an Act of Parliament for example, not required to pay tax. Therefore, the cap is based on the amount that is equal to tax calculated on the total contract payments to which the surety becomes entitled, at either the rate of 7% or 15%, depending on whether the surety's supply is made in an HST participating province.

Further, in determining the cap, the surety should only include amounts that are in respect of the particular construction that is carried on by the surety in satisfaction of the surety's obligations under the bond. For example, under paragraph 184.1(2)(*a*), consideration for the taxable supply made by the surety might include an unadvanced amount collected by the surety in respect of construction carried on by the principal. The surety must not include such amounts in the total contract payments for the purposes of paragraph 184.1(2)(*d*).

Application of New Section 184.1

The general application rule for section 184.1 is that it applies where, after October 8, 1998, the surety begins to carry on, or first engages another person to carry on for the surety, construction that is in full or partial satisfaction of the surety's obligations under the performance bond. However, the section does not apply at all if, on or before October 8, 1998, an advance contract payment by the obligee was paid or became due to the surety in respect of that construction and the surety treated it as non-taxable (i.e., did not charge or collect any amount as or on account of GST/HST).

In the case where the surety began to carry on, or first engaged another person to carry on for the surety, the relevant construction on or before October 8, 1998, paragraph 184.1(2)(*a*) alone applies, provided that, if the surety was in receipt of any contract payments from the obligee on or before that day, the surety consistently treated all such payments as taxable (i.e., charged or collected GST/HST on every payment and did not, on or before that day, adjust the tax under section 232). Where paragraph 184.1(2)(*a*) alone applies, the surety is, for all purposes of Part IX of the Act, treated as being engaged in making a taxable supply in carrying on that construction

and there is no limit imposed under section 184.1 on the claiming of related input tax credits.

Clause 29

Corporate Take-overs

ETA
186(2)

Subsection 186(2) applies in situations where a corporation acquires or proposes to acquire all or substantially all of the voting shares of the capital stock of another corporation that is engaged exclusively in commercial activities. In this case, the purchasing corporation is allowed to claim input tax credits for property and services it acquires in relation to the take-over or proposed take-over.

Existing subsection 186(2) refers only to tax payable in respect of supplies made to the purchasing company. The amended subsection recognizes the fact that tax might also become payable by the purchasing company upon importing property or bringing property into a participating province.

This amendment is effective April 1, 1997.

Clause 30

Gaming Activities

ETA
188.1

Section 188.1 sets out rules that apply to transactions involving prescribed provincial gaming authorities (referred to as "issuers") who conduct games of chance and to supplies by their distributors (within the meaning of subsection 188.1(1)). The amendments to this section confirm the policy and administrative practice in relation to the application of these rules to casino gaming and the operation of gaming machines such as video lottery terminals. The amendments therefore apply as of January 1, 1991.

Subclauses 30(1) and (2)

Definitions "gaming machine", "specified gaming machine supply" and "distributor"

ETA
188.1(1)

"gaming machine" and "specified gaming machine supply"

The terms "gaming machine" and "specified gaming machine supply" are defined for purposes of the amended definition "distributor" in subsection 188.1(1) and new paragraph 188.1(4)(*a*.2).

To be included in the definition "gaming machine", the machine must be operated by the person playing the game of chance. Further, the element of chance in the game must be provided by means of the machine. If the machine dispenses tickets or tokens evidencing a right to play or to receive a prize in a game of chance, it must be an "instant win" game. This definition is intended to encompass video lottery terminals and other gaming machines where the player can determine instantly whether a prize or winnings is due to him or her (e.g., it is not dependant on a draw).

To be included in the definition "specified gaming machine supply", a supply must be in respect of a gaming machine (as defined in subsection 188.1(1)) and made to an issuer (i.e., a prescribed provincial gaming authority who conducts the game of chance played by the operation of the machine). The consideration for the supply must be determined, at least in part, as a percentage of the proceeds from the operation of the gaming machine. A specified gaming machine supply would include, for example, a supply made to a provincial lottery corporation by a bar owner of a site in the owner's establishment for a video poker machine where the proceeds from the operation of the machine are shared on a percentage basis between the bar owner and the corporation.

Another example of a supply included in the definition "specified gaming machine supply" is a supply made to a provincial gaming authority of the use of a gaming machine by way of lease or license in return for a percentage share of the proceeds from the operation of the machine. Alternatively, a person might contract with a provincial

gaming authority to repair, maintain, or ensure the operation of a gaming machine (perhaps by emptying and refilling the machine) or to award or deliver prizes won by playing the game. Again, to qualify as a "specified gaming machine supply" in these cases, the consideration for the supply by the contractor must be determined at least in part as a percentage of the proceeds from the operation of the machine.

"distributor"

The definition "distributor" in subsection 188.1(1) is amended to include a person who accepts, on behalf of an issuer, a bet on a game of chance conducted by the issuer. This clarifies that casino operators are considered distributors for the purposes of section 188.1.

The definition "distributor" is also amended to include persons who make "specified gaming machine supplies", as newly defined in subsection 188.1(1).

Under amended subsection 188.1(4), distributors are not required to collect tax on supplies to provincial gaming authorities of specified gaming machine supplies, or on a service in respect of the acceptance, on behalf of an issuer, of a bet on a game of chance conducted by the issuer.

Subclause 30(3)

Deemed Non-supplies

ETA
188.1(4)

New paragraph 188.1(4)(*a*.1) deems a distributor's supply to an issuer of a service in respect of the acceptance, on behalf of the issuer, of bets on games of chance conducted by the issuer not to be a supply. This paragraph specifically includes a supply of a casino operating service. Similarly, new paragraph 188.1(4)(*a*.2) deems "specified gaming machine supplies" (as newly defined in subsection 188.1(1)) made to an issuer by a distributor of the issuer not to be supplies.

Paragraphs (*a*.1) and (*a*.2) relieve a distributor of having to collect tax from the issuer on supplies of a casino operating service and specified gaming machine supplies respectively. Instead, under the *Games of Chance (GST/HST) Regulations*, the issuer is required to include an amount equal to tax calculated on these supplies in determining the issuer's "imputed tax on gaming expenses" determined under subsection 7(7) of the Regulations.

Clause 31

Self-supply of Real Property

ETA
191

Section 191 ensures that GST/HST applies to newly constructed or substantially renovated premises once they are rented or otherwise occupied as places of residence before being sold since the subsequent sales of those residences generally will be exempt as used housing. This is accomplished by treating the builder of a residential complex as having sold and repurchased the complex. As a result, the builder is required to account for GST/HST on the fair market value of the complex.

Subclauses 31(1) and (2)

Self-supply of Multiple-unit Residential
Complex or Additions to Such Complexes

ETA
191(3) and (4)

Subsections 191(3) and (4) provide the applicable self-supply rules in the case of a multiple unit residential complex such as an apartment building and an addition to such a complex, respectively. The builder/landlord is treated as having sold and repurchased the entire complex or addition, as the case may be, at the time the first unit in the complex or addition is rented out or, if the builder is an individual, occupied by the builder. The builder is required to remit GST/HST on the fair market value of the complex or addition. Where units are rented out before the complex or addition, as the

case may be, is substantially complete, the self-supply rule applies at the time of substantial completion.

Amended subsections 191(3) and (4) extend these rules to builders who give possession of a residential unit in a multiple unit residential complex or addition in circumstances in which the building or part of the building in which the residential unit is located is sold but the related land is the subject of a ground lease. In this circumstance, the builder is required to account for tax on the fair market value of the land and the building or addition, as the case may be.

Minor editorial corrections are also made to the wording of subparagraphs 191(3)(*b*)(i) and (4)(*b*)(i).

These amendments are effective November 26, 1998 and apply in any case where a builder of a multiple unit residential complex or of an addition to such a complex gives possession of a residential unit in the complex or addition, as the case may be, on or after that day unless possession is given under an agreement in writing entered into before that day for the sale of the building, or part of the building, forming part of the complex.

Subclause 31(3)

Reference to "lease"

ETA
191(4.1)

Throughout Part IX of the Act, the expression "lease, licence or similar arrangement" is used in relation to supplies of property made otherwise than by way of sale (i.e., otherwise than by way of a transfer of ownership), unless the provision is intended to apply strictly to licences and not leases or *vice versa*. For consistency, therefore, new subsection 191(4.1) is added, effective on Royal Assent, with the intended effect of reading a reference in section 191 to a "lease" in respect of land as a reference to a "lease, licence or similar arrangement". This interpretation rule avoids future repetition of that expression in section 191.

Clause 32

Sale of Capital Personal Property

ETA
200(3) and (4)

Subsection 200(3) ensures that tax does not apply to a sale by a registrant of capital personal property that was not used primarily in commercial activities since unrecoverable tax would already have been paid in respect of the property. The subsection prevents double tax on the property by deeming the resale to be made otherwise than in the course of a commercial activity and therefore not taxable.

Existing subsection 200(3) does not apply to government departments and Crown agents except "specified Crown agents" (as defined in subsection 123(1)) because of the override rule for governments in existing subsection 200(4). The amendment to subsection 200(3) has the effect of excluding specified Crown agents as well from that subsection given that amended subsection 200(4) sets out the rules for all government entities.

Subsection 200(4) is amended so that it incorporates the rules for the sale of capital personal property by Crown agents and federal and provincial government departments. The rule is unchanged for government departments and federal Crown agents that are not "specified Crown agents". That rule, now provided in paragraph 200(4)(*b*), deems the sale of any capital personal property by the government to be made in the course of a commercial activity and therefore taxable.

Similarly, there is no change in the rule for federal Crown agents that are "specified Crown agents" (i.e., those federal Crown agents that are prescribed under the *Specified Crown Agents (GST/HST) Regulations*). For those agents that are registrants, the rule, now provided under paragraph 200(4)(*a*), deems the sale of their capital personal property not to be made in the course of commercial activities (and therefore not taxable) if the property was not last used primarily in commercial activities.

The substantive changes to these rules relate to provincial Crown agents. First, effective December 11, 1998, the definition "specified

Crown agent" in subsection 123(1) is amended to include provincial Crown agents that pay tax pursuant to agreements entered into under the *Federal-Provincial Fiscal Arrangements Act* (FPFAA).

Provincial Crown agents that pay tax pursuant to an agreement under the FPFAA recover the tax only to the extent that they are eligible to claim input tax credits or rebates under the GST/HST legislation like any other registrant. With respect to property acquired after 1990 (i.e., when tax under Part IX would have applied) and during a period that the agent was bound by the FPFAA agreement, a double tax situation could arise if the agent were required to charge tax on the resale of the property and the agent had not previously been entitled to claim an input tax credit for it. To avoid that result in that circumstance, such provincial specified Crown agents that are registrants are deemed under paragraph 200(4)(*a*) to have made the sale otherwise than in the course of a commercial activity, which is the same treatment afforded federal specified Crown agents in the same circumstances.

Second, the amended definition "specified Crown agent" in subsection 123(1) also contemplates the situation where a province that had not entered into an agreement under the FPFAA nevertheless, for competitive equity reasons, chooses to have particular provincial Crown agents pay the GST/HST and recover it in the same manner as do non-government entities with which those agents may compete. Such an agent might request to be prescribed as a "specified Crown agent" so that it could apply the same capital property rules as do prescribed federal Crown agents in the case of property that the provincial agent also requests be prescribed by regulation pursuant to amended subsection 200(4).

These amendments to subsections 200(3) and (4) apply to supplies made after January 29, 1999.

Clause 33

Real Property of Certain Public Service Bodies

ETA
209

Section 209 provides rules for the treatment of acquisitions, sales, and changes in use of real property of certain public service bodies (as defined in subsection 123(1)) and specified Crown agents, also as defined in that subsection. The section provides that these entities, provided they are not financial institutions, apply the same rules with respect to their capital real property as they do with respect to their capital personal property.

Section 209 is amended as a consequence of amendments to section 200, which separate the rules for governments and non-governments into subsection 200(3) and (4) respectively. A similar separation of rules is made in section 209 for public service bodies that are not Crown agents and for specified Crown agents. Corresponding changes are made to the cross-references to the relevant subsections of section 200. Given the extension of the definition of "specified Crown agent" in subsection 123(1) to include certain provincial Crown agents, section 209 is automatically also extended to the provincial Crown agents that qualify as "specified Crown agents". Additional minor wording changes are made to section 209 that do not have a substantive effect.

These amendments are effective January 29, 1999.

Clause 34

Rebate for Goods Damaged, etc.

ETA
215.1(2) and (3)

Subsections 215.1(2) and (3) provide for rebates of tax paid on goods that are imported under certain circumstances by an unregistered small supplier or by a person who is not acquiring the goods for use exclusively in commercial activities. In these circumstances, the

importer is not entitled to recover all of the tax on the importation as an input tax credit.

The rebate in each case is available where the importer is granted an abatement or refund of duties under the *Customs Act* (or would have been if the goods were subject to duty) because the goods were damaged, of inferior quality, defective, did not include the correct quantity or were not the goods ordered. Another condition for the rebate is that the importer has not been and is not entitled to be compensated under a warranty by receiving a supply of replacement parts that are exempt from tax on importation due to section 5 of Schedule VII.

Subsections 215.1(2) and (3) are amended to add to the existing references therein to "replacement parts" a reference to "replacement property", consistent with the amendment to section 5 of Schedule VII. The latter amendment clarifies that the section applies whether the warranty provides for the replacement of just parts of the deficient property or of the whole of the property even on a temporary basis.

This amendment is effective on Royal Assent.

Clause 35

Imported Taxable Supplies

ETA
217

Tax under Division IV of Part IX of the Act applies to certain supplies – referred to as "imported taxable supplies" – that include supplies of intangible personal property and services that are supplied outside Canada. Such supplies also include certain supplies of tangible personal property by unregistered non-resident persons where the supply of the property is deemed to be made outside Canada but the property is delivered or possession of it is transferred in Canada without tax under Division II or III applying to it. Section 217 defines the term "imported taxable supply" for the purposes of Division IV.

Under Division IV, the recipient of an imported taxable supply must self-assess tax calculated on the consideration for the supply.

Subclause 35(1)

Drop-shipments of Goods

ETA
217(*b*)(i)

Paragraph 217(*b*) includes in the definition "imported taxable supply" certain supplies of goods by unregistered non-resident persons to registrants who are not acquiring the goods for consumption, use or supply exclusively in the course of commercial activities. The circumstance in which such a supply falls into this paragraph is where the registrant acquiring the goods obtains physical possession of them from another registrant and provides that other registrant with a drop-shipment certificate referred to in section 179. That other registrant must have earlier supplied a service in respect of the goods or sold the goods to a non-resident person.

Under the existing wording of paragraph 217(*b*), the other registrant who is accepting the drop-shipment certificate must have earlier sold the goods or supplied the service to the same non-resident person as is supplying the goods to the registrant who must self-assess tax. However, the drop-shipment rules in section 179 also apply where the first registrant's supply was to a different non-resident person. The amendment therefore replaces the references in clauses 217(*b*)(i)(A) and (B) to "the" non-resident person with references to "a" non-resident person.

This amendment applies to supplies made after December 10, 1998.

Subclause 35(2)

Supply of Continuous Transmission Commodity under Exchange Agreement

ETA
217(*b*.2)

New section 15.1 of Part V of Schedule VI has the effect of zero-rating a supply of a continuous transmission commodity (newly defined in subsection 123(1)) supplied to an unregistered person in Canada in certain circumstances. The supply is zero-rated if the commodity is re-supplied in Canada by the unregistered person to a registrant in exchange for a commodity of the same class or kind situated outside Canada.

The re-supply in Canada to the registrant is deemed under section 143 to be made outside Canada if the unregistered person is a non-resident person. This re-supply by the non-resident person is added to the definition "imported taxable supply" under new paragraph 217(*b*.2) if the registered recipient in Canada is not acquiring the commodity for consumption, use or supply exclusively in the course of commercial activities. The registered recipient of the supply included in new paragraph 217(*b*.2) is therefore required to self-assess and remit tax in respect of the supply under Division IV.

New paragraph 217(*b*.2) applies to supplies deemed under section 143 to be made outside Canada after August 7, 1998.

Subclause 35(3)

Continuous Transmission Commodity Diverted to Use or Supply in Canada

ETA
217(*b*.3)

A supply of a continuous transmission commodity (newly defined in subsection 123(1)) to a registrant is zero-rated, under new section 15.2 of Part V of Schedule VI, where the registrant provides the supplier with a declaration in writing that the registrant intends to

export the commodity or re-supply it in exchange for a commodity of the same class or kind situated outside Canada.

If the commodity that was initially so supplied on a zero-rated basis is ultimately neither exported nor exchanged by the registrant as described in section 15.2, the supply of it to the registrant is also included in the definition "imported taxable supply", provided the registrant is not acquiring the commodity exclusively for consumption, use or supply in the course of commercial activities. If it is an imported taxable supply, the registrant is required to self-assess and remit tax in respect of the supply under Division IV.

Under Division IV, the tax is considered to have become payable when the consideration for the supply became due and is required to be remitted on or before the due date of the return for the registrant's reporting period in which the tax became payable. Penalty and interest under section 280 accrue from that day on any amount of such tax that is not remitted on or before that day.

It should also be noted that new section 236.1 adds an amount to the registrant's net tax for the reporting period in which tax on the initial supply would have become payable had that supply not been a zero-rated supply (i.e., generally the reporting period in which consideration for that supply became due). The amount so added also attracts penalty and interest under section 280, accruing from the due date of the return for the period, if it results in an underpayment of positive net tax or an overpayment of a net tax refund for that reporting period.

New paragraph 217(*b*.3) applies to supplies made after October 1998.

Clause 36

Tax in Participating Provinces

ETA
218.1

Section 218.1 imposes tax in respect of the provincial component of the HST on "imported taxable supplies" (as defined in section 217) of property and services made outside Canada where the property or

service is acquired for consumption, use or supply otherwise than exclusively in the course of a commercial activity.

Subclauses 36(1) and (2)

Tax on Commodity Delivered or Made Available in Participating Province

ETA
218.1(1)(*c*)

Existing paragraph 218.1(1)(*c*) is amended to add a reference to new paragraphs 217(*b*.2) and (*b*.3), each of which describe an "imported taxable supply" (within the meaning of section 217) of a continuous transmission commodity (defined in subsection 123(1)). As a result of this amendment to section 218.1, those supplies are also subject to the 8% component of the HST where the commodity is delivered or made available in a participating province and the recipient is either resident in that province or is a registrant. New paragraphs 217(*b*.2) and (*b*.3) are consequential on the addition of sections 15.1 and 15.2 of Part V of Schedule VI (see commentary on clause 115).

The addition of the reference to paragraph 217(*b*.2) applies to supplies made after August 7, 1998. The addition of the reference to paragraph 217(*b*.3) is added with respect to supplies made after October 1998.

Subclause 36(3)

Selected Listed Financial Institutions

ETA
218.1(2)

Generally, under subsection 218.1(2), selected listed financial institutions (within the meaning of subsection 225.2(1)) are not required to self-assess tax imposed under subsection 218.1(1) (i.e., the provincial component of the HST) in respect of an imported taxable supply described in section 217. This is because these institutions account for the provincial component of the HST on their purchases through adjustments to their net tax calculation under subsection 225.2(2). However, subsection 218.1(2) makes an

exception for certain prescribed amounts of tax that are excluded from the special net tax adjustment. In respect of those prescribed amounts, the institution does not add any imputed amount in respect of the provincial component of the HST to its net tax and, accordingly, remains subject to the tax under section 218.1.

Subsection 218.1(2) is amended to also make an exception for an imported taxable supply of property or a service acquired otherwise than for consumption, use or supply in the course of an endeavour (within the meaning assigned by subsection 141.01(1)). The exception is made for these supplies given that these too are outside the scope of the supplies in respect of which a net tax adjustment is made by the institution under subsection 225.2(2) as a consequence of the amendment to subsection 225.2(3).

The amendment to subsection 218.1(2) is effective April 1, 1997.

Clause 37

Exception for Selected Listed Financial Institutions

ETA
220.04

Generally, under section 220.04, selected listed financial institutions (within the meaning of subsection 225.2(1)) are not required to self-assess tax imposed under Division IV.1 (i.e., the provincial component of the HST) in respect of property or services brought into a participating province. This is because these institutions account for the provincial component of the HST on their purchases through adjustments to their net tax calculation under subsection 225.2(2).

However, section 220.04 makes an exception for certain prescribed amounts of tax that are excluded from the special net tax adjustment. In respect of those prescribed amounts, the institution does not add any imputed amount in respect of the provincial component of the HST to its net tax and, accordingly, remains subject to the tax under Division IV.1.

Section 220.04 is amended to also make an exception for property or a service brought into the participating province or acquired otherwise than for consumption, use or supply in the course of an endeavour (within the meaning assigned by subsection 141.01(1)). The exception is made for these properties and services given that they too are excluded from the property and services in respect of which a net tax adjustment must be made by the institution under subsection 225.2(2) as a consequence of the amendment to subsection 225.2(3).

The amendment to section 220.04 is effective April 1, 1997.

Clause 38

Sale of Real Property

ETA
221(2)(*b*)

Existing subsection 221(1) generally requires a person making a taxable supply to collect the tax payable in respect of the supply as agent for Her Majesty in right of Canada. Existing subsection 221(2), however, provides an exception for certain supplies of real property by way of sale. In those exceptional circumstances, the supplier is not required to collect the tax on the supply. Instead, the recipient is required to remit the tax payable directly to Revenue Canada.

One of the circumstances in which the recipient remits the tax directly to Revenue Canada is where the recipient is an individual registered for GST/HST purposes and the property is not a residential complex. As a result of the latter rule, a registered individual receiving a taxable supply by way of sale of a cemetery plot or similar site would have to remit the tax directly to Revenue Canada. On the other hand, individuals who are not registered for GST/HST purposes would simply pay the tax to the supplier as they would for any other taxable purchase.

Amended paragraph 221(2)(*b*) excludes taxable sales of cemetery plots and similar sites from the exception so that the supplier must

collect tax from the recipient whether or not the recipient is an individual registered for GST/HST purposes.

This amendment applies to supplies made after December 10, 1998.

Clause 39

Purchase of Inventory under Export Certificate

ETA
221.1(2)(*a*)

Section 221.1 provides for the use by registrants of export certificates under which they can purchase inventory on a zero-rated basis provided they meet the conditions on the use of the certificate. One of those conditions is that 90% of the value of the registrant's inventory purchases in the twelve-month period following the requested effective date of the certificate is expected to be attributable to purchases meeting the conditions for zero-rating under section 1 of Part V of Schedule VI. An exception is that the supplier need not maintain evidence of export as provided under existing paragraph (*d*) of section 1 of that Part.

Paragraph 221.1(2)(*a*) is amended to replace the cross-reference to "paragraph (*d*)" with a reference to "paragraph (*e*)" as a consequence of the renumbering of paragraphs 1(*a*) to (*d*) of Part V of Schedule VI (see commentary on clause 110).

Clause 40

Deemed Trust

ETA
222

Section 222 generally deems amounts of GST/HST collected to be held in trust for Her Majesty in right of Canada.

Subclause 40(1)

Trust for Amounts Collected

ETA
222(1)

Subsection 222(1) deems any amounts collected as or on account of tax to be held in trust for Her Majesty until remitted or withdrawn under subsection 222(2). Subsection 222(1) is amended, effective on Royal Assent, to clarify that the Crown's claim to the amounts held in trust takes precedence over any other security interest in those amounts (other than a security interest prescribed under new subsection 222(4)). However, subsection 222(1) remains subject to the exception described in subsection (1.1) in the case of a bankruptcy.

Further, subsection 222(1) is amended, effective on Royal Assent, to incorporate the concept under existing subsection 222(3) that the amounts in trust are considered to be held separate and apart. The reference to the liquidation, assignment, receivership or bankruptcy of or by a person is deleted since the amounts deemed to be held in trust under subsection (1) are intended to be considered to be so held separate and apart from the time the amounts form part of the deemed trust.

These changes parallel amendments made previously to similar provisions under subsection 227(4) of the *Income Tax Act* (by c. 21, S.C., 1994 and c.19, S.C., 1998).

Subclause 40(2)

Extension of Trust and Meaning of "security interest"

ETA
222(3) and (4)

Subsection 222(3) Extension of Trust

Existing subsection 222(3) is replaced, effective on Royal Assent, with a rule that the deemed trust applies only to property of the person equal in value to the amounts deemed to be held in trust and

not paid to Her Majesty as and when required. In addition, it clarifies that the Crown's claim over the deemed trust amounts takes priority over any security interest of a secured creditor (other than a security interest prescribed under new subsection 222(4)). To the extent that, under subsection (1.1), the deemed trust does not apply to certain amounts in the case of bankruptcy, this priority likewise does not apply to those amounts.

The amendments to section 222 respond to the decision of the Supreme Court of Canada in *Her Majesty the Queen v. Royal Bank of Canada,* which held that the then existing rules in the *Income Tax Act* creating a deemed trust did not give priority to the Crown over certain assignments of inventory and that clearer language was required to assign absolute priority to the Crown. The amendments under this subclause parallel similar amendments made previously to section 227 of that Act (by c.19, S.C., 1998).

Subsection 222(4) Meaning of "security interest"

New subsection 222(4), which is effective on Royal Assent, excludes from the rules in subsections (1) and (3) a prescribed security interest. A prescribed security interest is intended to include certain mortgage interests in real property.

Clause 41

Sale of Account Receivable

ETA
222.1

Subsection 222(1) deems amounts collected as or on account of tax to be held in trust for Her Majesty until remitted or withdrawn under subsection 222(2). As a result, a person who is the purchaser or assignee of an account receivable can be found to be holding the tax component of the receivable in trust for the Crown to the extent that it is collected by the person as or on account of tax. Furthermore, the existing legislation requires any person collecting amounts as or on account of tax to include those amounts in the person's net tax. It would be inappropriate for the purchaser/assignee to include the tax component of the receivable in net tax given that the vendor/assignor

who made the original supply that gave rise to the account receivable was liable to include the tax component in determining that vendor/assignor's net tax.

New section 222.1 has the effect of relieving the purchaser/assignee of an account receivable from any potential liability for the tax component of the account receivable. The obligation to remit the tax component of an account receivable rests with the vendor who made the original supply giving rise to the account receivable.

New section 222.1 accomplishes this by deeming the original vendor to have collected, at the time of the sale/assignment, all tax not already collected by the vendor on the original supply that gave rise to the account receivable. The effect of this provision is that the amounts so deemed to have been collected on account of tax at the time of the sale of the receivable are included in the amounts deemed under section 222 to be held in trust by the vendor from that time until the amounts are remitted or withdrawn. The amounts will also have to be taken into account as tax collected when calculating the vendor's net tax unless the amounts were previously included in the vendor's net tax as amounts of tax collectible.

Any amounts collected at a later time by a person who purchases the receivable (including the original vendor if the vendor subsequently buys back the receivable) are deemed not to be amounts collected as or on account of tax at that later time. As a result, they are not included at that later time in any deemed trust.

New subsection 222.1 applies to any supply of an account receivable the ownership of which is transferred under the agreement for the supply after December 10, 1998.

Clause 42

Disclosure of Tax

ETA
223

Existing section 223 sets out the general tax disclosure requirements with which all registrants must comply when making taxable supplies.

Recent amendments to subsection 223(1) (enacted by c. 10, S.C., 1997) provided that, where a registrant indicates the GST/HST on invoices, receipts or written agreements, the total amount of the tax payable or the tax rates and the items that are taxable must be shown as opposed to indicating the 7% and 8% components separately where HST is applicable. However, the amendments also had the effect of requiring that all invoices, receipts and agreements disclose this information, even where the registrant is complying with the manner of disclosure prescribed by regulations (i.e., using acceptable signs).

The amendments to subsection 223(1) retain the ability of a registrant to satisfy the disclosure requirements by following the prescribed manner, even if the registrant also issues invoices, receipts or written agreements. In other words, if the registrant is complying with the prescribed manner of disclosure, the registrant's invoices, receipts and agreements need not indicate the tax or the total tax rate, subject of course to subsection 223(2), which requires the registrant to furnish information on the demand of a recipient who requires it for input tax credit or rebate purposes. Subsection 223(1.1), however, retains the existing requirement that, if the registrant does choose to indicate the tax on any invoice, receipt or agreement, whether or not in conjunction with the use of signs, that indication must be such that the total of the amount of tax or of the rates of tax be shown.

An exception is provided under new subsection 223(1.2) in relation to the supply of printed books (currently the only prescribed item under subsection 234(3)) for which the supplier has credited the recipient the amount of a provincial rebate at the point of sale. In this case, the supplier may indicate the tax net of the provincial component of the HST.

These amendments come into force on April 7, 1997, which is the effective date of the latest changes to section 223 (enacted by c. 10, S.C., 1997).

New subsection 223(1.3) provides another exception to the disclosure requirements under subsection (1). Subsection (1) does not apply to a registrant who does not collect the tax payable in respect of a supply because the recipient is obligated to remit the tax directly to Revenue Canada (e.g., in cases described in subsection 221(2), (3) or (3.1)).

New subsection 223(1.3) applies to supplies made after December 10, 1998.

Clause 43

Net Tax Calculation for Charities

ETA
225.1

Section 225.1 sets out a streamlined accounting method by which registrants that are charities (within the meaning of subsection 123(1)) calculate their net tax. Under this method, the charity includes in its net tax only 60 % of the tax collectible on specified supplies (which include most taxable supplies other than sales of capital and real property). The inclusion of only 60% of that tax collectible is in lieu of claiming input tax credits on most inputs. The charity includes in its net tax 100% of the tax collectible on sales of capital and real property and other specifically enumerated supplies.

Subclauses 43(1) to (3)

Meaning of "specified supply" and
Inclusion of Tax Collected or Collectible

ETA
225.1(1) and Element "A" of the Formula in 225.1(2)

Subsection 225.1(1) defines the term "specified supply" for purposes of section 225.1. Specified supplies are those in respect of which the charity includes only 60% of the tax collectible in determining its net tax in lieu of claiming input tax credits in respect of related inputs.

Tax collectible on supplies deemed under subsection 177(1) or (1.2) to be made by the charity acting as an agent should be included in full in the charity's net tax. Subsection 225.1(1) is therefore amended to exclude from specified supplies any supply deemed under subsection 177(1) or (1.2) to have been made by the charity. A related amendment to the charity's net tax formula in subsection 225.1(2) adds a reference to these supplies in new clause (*b*)(iii)(A) of the description of element A of the formula.

These amendments to the definition "specified supply", and new clause (*b*)(iii)(A) of the description of element A, apply for the purpose of determining net tax for reporting periods ending after November 26, 1997.

Subclause 43(2) adds new paragraph (*b*.1) to the description of element A of the net tax formula. Under that paragraph, the charity is required to include 100% of any amount collected as or on account of tax under Part IX where the amount was collected in error. Appropriate mechanisms exist under Part IX for the recipient to recover the amount paid in error. Those mechanisms presume that the supplier was required to remit the amount when collected. This amendment is proposed to apply for purposes of determining the net tax of a charity for reporting periods ending after Announcement Date.

Subclauses 43(4) and (5)

Allowable Input Tax Credits and Deductions under Net Tax Formula

ETA
Element "B" of Formula in 225.1(2)

The amendments to element B of the net tax formula for charities in subsection 225.1(2) enable a charity using that formula to claim input tax credits or deductions from net tax in three additional circumstances.

First, new subparagraph (*a*)(iv) of element B deals with the circumstance where the charity, as principal, sells property through an agent. Since the agent is required to include 100% of the tax collectible on the sale in the agent's net tax, the charity is entitled under the new subparagraph to claim an input tax credit for tax payable by it in respect of the property if the charity acquired, imported or brought the property into a participating province for the purpose of the sale.

Second, new subparagraph (*a*)(v) of element B of the formula deals with the situation where the charity acts as agent for another person in making a supply of property in circumstances in which subsection 177(1) or (1.2) applies and the charity is deemed to have acquired the property and to have paid tax by the operation of

paragraph 180(*e*). Since the charity is required under new clause (*b*)(iii)(A) of element A of the formula to include 100% of the tax collectible on these supplies of property in its net tax, the charity is entitled to a full input tax credit for the tax it is deemed under section 180 to have paid in respect of the property.

Third, new paragraph (*b*.1) of the description of element B enables a charity operating a bottle return depot to claim a net tax deduction in respect of returnable containers for which it pays refundable deposits. The total amount refunded by the charity includes the provincially-mandated deposit and tax under Part IX calculated on that deposit. Therefore, the charity is entitled to a net tax deduction for the tax component of the amount it refunds in respect of the deposit equal to 7% (or 15% where the charity is in an HST-participating province). The circumstances in which the net tax deduction may be claimed and the calculation of the amount of the deduction are set out in new subsection 226(4.1) (see commentary on clause 45).

New subparagraphs (*a*)(iv) and (v) of element B of the charity's net tax formula apply, for the purpose of determining net tax for reporting periods beginning after 1996, to any property deemed under subsection 177(1) or (1.2) (as enacted by c.10, S.C., 1997) to have been supplied by an auctioneer acting as agent of the charity. These amendments also apply to any property to which subsection 177(1.1) (as enacted by that chapter) applies. In other words, the amendments generally apply to supplies made after April 23, 1996.

New paragraph (*b*.1) of element B of the formula applies for the purpose of determining net tax for reporting periods ending after March 1998.

Subclause 43(6)

Exception where Net Tax Formula Does Not Apply

ETA
225.1(11)

New subsection 225.1(11) provides that the rules for determining the net tax of a charity under section 225.1 are not applicable to a charity that is designated under new section 178.7 (see commentary on

clause 23). Under the latter section, a charity can apply to be designated for the purpose of treating its supplies of services to registrants as taxable supplies so that it and its registered customers can claim related input tax credits. The special net tax formula under section 225.1, which generally disallows input tax credits in favour of the charity remitting only 60% of the tax it collects, would not be appropriate for such a designated charity.

A related amendment is made to section 227 to permit a designated charity to elect to use the streamlined accounting method prescribed under that section for certain public service bodies (i.e., the "Special Quick Method").

This amendment applies for the purpose of determining the net tax of a charity for reporting periods beginning after February 24, 1998.

Clause 44

Selected Listed Financial Institutions

ETA
225.2

Section 225.2 sets out rules for determining the net tax of selected listed financial institutions, as defined in subsection (1) of the section. Such institutions generally include the traditional types of financial institutions (i.e., banks, trust companies and insurance companies) that allocate income to one or more HST participating provinces and one or more non-participating provinces for income tax purposes. The special rules under section 225.2 provide for adjustments to their net tax in respect of the provincial component of the HST.

Subclauses 44(1) and (2)

Adjustment to Net tax

ETA
225.2(2)

Paragraph (*b*) of the description of element A in the formula in subsection 225.2(2) requires a selected listed financial institution to

add an amount to its net tax. This applies where the institution receives a supply that is deemed under section 150 to be a supply of a financial service. The amount required to be added is equal to the GST (or the 7% component of the HST) that would have been payable on the supply if the supply had not been treated as a financial service. At the same time, paragraph (*b*) of the description of element B of the formula allows the institution to deduct the amount that would be the input tax credit of the institution in respect of the supply if the supply had been a taxable supply.

Existing paragraph (*b*) of both elements makes an exception for amounts of tax prescribed for the purposes of paragraph (*a*) of element A of the formula. This exception is not needed. Only amounts of tax actually paid or payable are prescribed for purposes of paragraph (*a*). No actual tax would have been paid or payable in circumstances in which section 150 applies, which is the only circumstance dealt with in paragraphs (*b*) of elements A and B. Therefore, the amendment removes the references therein to prescribed amounts.

In addition, the superfluous reference is removed from subsection 225.2(2) as it reads for the purpose of determining the net tax of a selected listed financial institution for the reporting period of the institution that straddles April 1, 1997 (see commentary on clause 122).

These amendments are effective April 1, 1997.

Subclause 44(3)

Exclusions from Adjustment

ETA
225.2(3)

Subsection 225.2(3) excludes certain amounts of tax and certain input tax credits from the net tax adjustment under subsection 225.2(2) for selected listed financial institutions (as defined in subsection 225.2(1)).

Subsection 225.2(3) is amended by adding a new paragraph that also excludes from the net tax adjustment an amount of tax paid or

payable by a selected listed financial institution in respect of property or a service acquired, imported or brought into a participating province otherwise than for consumption, use or supply in the course of an endeavour (within the meaning assigned by subsection 141.01(1)). Therefore, an individual that qualifies as a "selected listed financial institution" (e.g., a sole proprietor who operates a brokerage business in both a participating province and a non-participating province) need not include in the individual's net tax adjustment any tax in respect of property or a service that is for the individual's personal use.

This amendment is effective April 1, 1997.

Clause 45

Net Tax Deduction or Refund for Charity

ETA
226(4.1)

New subsection 226(4.1) applies where a charity operates an authorized bottle return depot in a province in the course of exempt activities and refunds a provincially-mandated refundable deposit. In this case, the charity is allowed to claim a net tax deduction (which could result in a net tax refund) equal to 7% (or 15% where the province is an HST-participating province) of the refundable deposit. The charity must pay the refundable deposit, plus an amount equal to the deduction, to the person from whom it collects the container. A related amendment is made to the net tax formula for charities under subsection 225.1(2).

New subsection 226(4.2) specifies the limitation period within which a charity must claim a deduction under new subsection 226(4.1). The charity may claim a deduction in respect of a returnable container on or before the due date of the return for the last reporting period of the charity that ends within four years after the end of the reporting period in which the container is supplied to the charity.

New subsections 226(4.1) and (4.2) apply in respect of used containers supplied to charities after March 1998.

Clause 46

Election for Streamlined Accounting

ETA
227(1)

The amendment to subsection 227(1) is consequential on the addition of new section 178.7, which allows a charity designated by the Minister of National Revenue to elect to exclude from the general exemption for charities its supplies of services to registrants. The charity applies to be designated for the purpose of charging tax on its supplies to registered customers so that the charity and those customers are in a position to claim input tax credits. Therefore, the special streamlined net tax formula for charities under section 225.1, under which the charity is generally denied input tax credits, is not appropriate for the designated charity.

Subsection 227(1) is amended to provide a designated charity the option of using a streamlined accounting method prescribed under that subsection instead. The prescribed method to be made available to designated charities is the "Special Quick Method" that applies to public service bodies such as municipalities.

This amendment applies to reporting periods beginning after February 24, 1998.

Clause 47

Interest and Penalties

ETA
228(2.1)(*a*)

Subsection 228(2.1) requires a selected listed financial institution (defined in subsection 225.2(1)) that is required to file interim returns for reporting periods and a final return only after the end of the fiscal year to also make an interim payment on account of net tax for a reporting period. Paragraph 228(2.1)(*a*) provides a rule to calculate that interim payment. One of the elements of the calculation is the "percentage for a participating province", which refers generally to

the percentage of income of the institution allocated to the province for income tax purposes. The amendment adds the reference to "for the participating province", which is missing in relation to one of the existing references to the institution's percentage.

This amendment applies to reporting periods ending after March 1997.

Clause 48

Bad Debt Relief

ETA
231

Section 231 deals with the treatment of bad debts. Subsection 231(1) entitles a supplier to claim, in determining the supplier's net tax, a deduction in respect of a bad debt written off by the supplier relating to an arms-length supply. The deduction is contingent on the supplier having reported the tax collectible on the supply in a return and remitted the net tax, if any, reported in that return. Existing subsection 231(2) allows a financial institution that is a member of the same closely related group of which the supplier is a member to instead claim a net tax deduction if the financial institution has purchased the account receivable relating to the bad debt at face value and on a non-recourse basis and the financial institution writes off the bad debt.

The amendment repeals subsection 231(2). As a result, bad debt relief is available only to the registrant who makes the supply. Consequential amendments are also made to subsections 231(3) and (4) to remove the reference to subsection (2).

The repeal of subsection 231(2) and the amendment to subsection 231(4) both apply to any account receivable purchased in the circumstances described by existing subsection 231(2), where the ownership of the receivable is transferred after 1999. The amendment to subsection 231(3) applies to the recovery of a bad debt in respect of an account receivable purchased after 1999.

Clause 49

Tax Adjustments

ETA
232(3)

Section 232 sets out the rules relating to refunds or adjustments of tax. The amendment to subsection 232(3), and a corresponding amendment to section 263 (see commentary on subclause 68(2)), ensure that a person is not entitled to both a refund, credit or adjustment from a supplier and a rebate from Revenue Canada with respect to the same amount.

The amendment to subsection 232(3) has the effect of requiring the recipient of a refund, credit or adjustment of tax from a supplier to pay back to the Receiver General an amount of any rebate under Division VI previously received in respect of the amount refunded, credited or adjusted. The amount that must be paid back is equal to the difference between the rebate received and the amount of the rebate, if any, to which the recipient would have been entitled if the amount of the tax that was refunded, credited or adjusted by the supplier had never been charged or collected from the recipient in the first place.

This rule applies if the recipient receives the rebate under Division VI before the day that a credit note is received, or a debit note is issued, by the recipient for the refund, credit or adjustment by the supplier. In that case, the payment to the Receiver General is due as of that day. A separate rule applies under section 263 if the recipient receives the credit note, or issues the debit note, before the rebate under Division VI is received.

This amendment applies to any amount adjusted, refunded or credited, if the credit note for the amount is received, or the debit note for the amount is issued, by the recipient after December 10, 1998.

Clause 50

Promotional Allowances

ETA
232.1

New section 232.1 applies where a vendor makes taxable supplies by way of sale of goods and pays, credits or allows a discount to another registrant who acquires the goods, either from that vendor or another person, exclusively for resale in the course of the purchaser's commercial activities. In these circumstances, new section 232.1 provides that if, in return for the promotion of those goods by the purchaser, an amount (the "promotional allowance") is paid or credited by the vendor to the purchaser or is allowed as a discount against the price of those or any other goods purchased from the vendor, the promotional allowance is not regarded as consideration for a supply by the purchaser to the vendor. In other words, the recipient of the allowance is not considered to have supplied a promotional service.

If the promotional allowance is taken as a discount on, or credit against, the price of any property or service purchased directly from the vendor who grants the allowance, there are two possible results. If the vendor already charged or collected tax on the discounted property or service (on a previous invoice for example), the promotional allowance is treated as an after-the-fact price adjustment for purposes of section 232. As such, pursuant to section 232, the supplier retains the choice of whether to adjust the tax previously charged or collected. If the supplier chooses not to make a tax adjustment, the promotional allowance has no GST or HST consequences.

If, however, the supplier chooses to treat a portion of the allowance as a tax adjustment, pursuant to section 232, a credit note or debit note must be issued and the supplier may deduct the amount of the tax adjustment in determining net tax. In this case, the information requirements prescribed under the *Credit Note Information Regulations* must be complied with in order for the supplier to claim a net tax adjustment. The purchaser, in turn, must add the amount of the tax adjustment to the purchaser's net tax to the extent that the purchaser previously claimed an input tax credit for the amount.

If the tax on the discounted property or service has not already been charged or collected (e.g., the promotional allowance is being credited on the original invoice for the discounted property or service), the price of the discounted property or service for GST/HST purposes is deemed to be the amount net of the promotional allowance. Therefore, in this case, tax applies only on the price net of the promotional allowance.

Alternatively, if the promotional allowance is granted by means of a payment to, or credit in favour of, the purchaser in such a way that it does not attach to any particular invoice or supply by the payer of the allowance (e.g., a general credit to the purchaser's account), the promotional allowance is regarded as a rebate for the purposes of section 181.1. Therefore, the payer has the option of indicating in writing to the purchaser that a portion of the allowance is in respect of tax and claiming a net tax adjustment. If the payer chooses to do so, the purchaser, in turn, must add the adjustment to its net tax to the extent that an amount in respect of the tax was previously claimed as an input tax credit.

New subsection 232.1 applies to promotional allowances paid, credited or allowed as a discount after March 1997.

Clause 51

Patronage Dividends

ETA
233

Section 233 sets out the rules whereby registrants issuing patronage dividends can choose to treat the dividends as not reducing the value of consideration for any supplies made to the dividend recipient or alternatively as price adjustments in respect of such supplies.

Subclause 51(1)

Payment of Patronage Dividend

ETA
233(2) of French Version

Subsection 233(2) of the French version of the Act is amended to ensure consistency with the English version and to clarify, as of January 1, 1991, the reference to the person who is making the supplies to which the patronage dividend relates.

Subclauses 51(2) and (3)

Calculation of Tax Adjustment in respect of Patronage Dividends

ETA
233(2)

In the event that the issuer of a patronage dividend chooses, for GST/HST purposes, to treat the dividend as a price adjustment in respect of supplies made to the dividend recipient, the amount of the price adjustment is determined under subsections 233(1) and 233(2).

The formulae in existing paragraphs 233(2)(*a*) and (*a*.1) do not determine appropriately the portion of the patronage dividend that represents a price adjustment for tax purposes in a case where the dividend is in respect of both supplies taxable at the GST rate of 7% and supplies taxable at the HST rate of 15 per cent. The existing formulae employ the factors 100/107 and 100/108. The amended formulae employ the factors 100/115 and 100/107 (in relation to supplies made in participating and non-participating provinces respectively) in circumstances in which the payer of the dividend has elected to track the actual amount of the dividend relating to taxable non-zero-rated supplies instead of using an estimated amount.

Alternatively, where the payer of the dividend estimates the portion of the dividend relating to taxable non-zero-rated supplies by using the amount referred to in the section as the "specified amount", the amended formulae determine the appropriate price adjustment for supplies made in participating and non-participating provinces. The specified amount is multiplied by the percentage of the total

tax-included value of non-zero-rated supplies for the preceding year (used in determining the specified amount) that is attributable to supplies made in participating and non-participating provinces respectively.

Subsections 233(4) and (5) are amended consequentially to refer to the election under "subsection (2)" as a result of the restructuring of the latter subsection. Minor wording clarifications are also made to subsection 233(5).

These amendments are effective November 26, 1997 and apply to patronage dividends declared after that day.

Clause 52

Deduction for Rebate

ETA
234(1)

Existing subsection 234(1) applies to registrants who make a taxable supply of new housing or a taxable supply to a non-resident recipient of certain installation services and who pay or credit rebates of the tax on the supplies to the recipients. The subsection allows the registrants to deduct the amount paid or credited in determining the registrant's net tax.

The reference to "registrant" in this subsection has the unintended consequence of precluding a non-registered person who qualifies as a "builder" (within the meaning of subsection 123(1)) from claiming a deduction in respect of the amount of tax that the person is otherwise required to account for in certain circumstances in respect of a new residential complex. Amended subsection 234(1) replaces the reference to "registrant" with a reference to "particular person". This change applies after April 23, 1996.

The amendment to subsection 234(1) also broadens the application of the subsection by adding a reference to new subsections 258.1(3) and (4). Those subsections allow for the point-of-sale crediting of a rebate provided under new section 258.1 in respect of motor vehicles specially equipped for transporting individuals with disabilities. The

addition of the references to subsections 258.1(3) and (4) is effective April 4, 1998.

Clause 53

Leased Passenger Vehicles

ETA
235

The purpose of section 235 is to recapture input tax credits in respect of leased passenger vehicles where the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*.

Subclause 53(1)

Net Tax where Passenger Vehicle Leased

ETA
235(1) of French Version

The French version of subsection 235(1) is amended, effective January 1, 1991, for clarification purposes to be more consistent with the English version of that subsection. Also, the French version of that subsection is amended to clarify the reference to the "appropriate reporting period", which is defined in subsection 235(2).

Subclause 53(2)

Calculation of Amount Recaptured

ETA
Element "B" of the formula in 235(1)

Subsection 235(1) requires an amount, which includes the provincial component of the HST where applicable, to be added to a registrant's net tax in respect of a leased passenger vehicle where the lease costs exceed the maximum lease costs that are deductible under the *Income Tax Act*. However, under the rules pertaining to the calculation of net tax by selected listed financial institutions (defined in subsection 225.2(1)), those institutions are already required to add to

their net tax an amount in respect of the 8% component of the HST on the lease cost.

Subsection 235(1) is therefore amended such that the amount required to be added to net tax by a selected listed financial institution under that subsection is calculated only with respect to the 7% GST or the 7% component of the HST.

This amendment is effective April 1, 1997.

Clause 54

Food, Beverage and Entertainment Expenses

ETA
236

Subsection 236(1) Input Tax Credit Recapture

Section 236 is intended to parallel section 67.1 of the *Income Tax Act*. These provisions result in a limitation on amounts in respect of food, beverages or entertainment that may be deducted in determining income for income tax purposes and that determine the net recovery of GST/HST as input tax credits (ITCs). Specifically, the intended treatment for GST/HST purposes is to recapture ITCs attributable to these expenses in the same proportion as the expenses are disallowed as a deduction for income tax purposes by reason of section 67.1. It should be noted that, in addition to section 67.1, there could be other provisions of the *Income Tax Act* that apply to a particular expense and affect its deductibility for income tax purposes. Section 236 parallels only the effect of section 67.1 of that Act (as an example, see the discussion below on conventions).

While section 67.1 of the *Income Tax Act* refers only to "amounts paid or payable" in respect of food, beverages or entertainment, existing subsection 236(1) refers to "supplies" of these items. Subsection 236(1) is amended to clarify the application of section 236 where a payment is attributable to a number of items of which food, beverages or entertainment is one but not necessarily the principal item.

One example is where a fee for a supply of a professional's services to a client includes an amount attributable to the professional's disbursements on meals. While the client pays an amount in respect of food or beverages, that amount is not for a supply of food or beverages made to the client.

The formula in amended subsection 236(1) is added to clarify the determination of the amount of the ITC recapture. The formula references the amount considered for purposes of section 67.1 of the *Income Tax Act* to be the amount paid or payable in respect of food, beverages or entertainment. An amount in respect of entertainment includes an amount in respect of amusement or recreation given the definition of "entertainment" in that section. Further, an amount paid or payable in respect of food, beverages or entertainment includes, in addition to consideration, related gratuities, GST/HST and provincial or local taxes.

For example, suppose a registrant incurs a meal expense of $100 and the applicable taxes paid on that meal are 7% GST, 8% PST and a $15 gratuity, bringing the total amount paid for the meal to $130. Assuming the registrant incurred the meal expense exclusively in the course of commercial activities and that the registrant claimed a $7 ITC, the amount recaptured in respect of this expense would be $3.50 (50% x ($130/$130) x $7).

In the case of a conference, convention, seminar or similar event that entitles the participant to more than incidental food, beverages or entertainment, if the portion of the event fee that is attributable to those items is not identified in the fee, the amount considered to be actually paid or payable in respect of those items is the amount deemed under subsection 67.1(3) of the *Income Tax Act*. That amount is $50 (or such other amount as may be prescribed under that subsection) multiplied by the number of days of the event that food, beverages or entertainment is provided.

It is important to note that the deductibility for income tax purposes of certain convention expenses is also affected by subsection 20(10) of the *Income Tax Act*, which generally provides that taxpayers can deduct expenses incurred in attending not more than two conventions per year. Section 67.1 of that Act nevertheless applies to all of the convention expenses incurred by the taxpayer that are in part attributable to food, beverages or entertainment.

Subsection 20(10) is not mirrored in the GST/HST legislation. Therefore, the taxpayer is entitled to claim an ITC in respect of convention expenses that are disallowed for income tax purposes as long as all requirements under Part IX of the *Excise Tax Act* for claiming the ITC are met. The amount that section 67.1 deems to be paid or payable in respect of food, beverages or entertainment serves as the basis for determining the portion of that ITC that is subsequently recaptured. This would be the case for every convention at which food, beverages or entertainment were provided, despite the fact that the taxpayer may be limited to choosing only two of the conventions in respect of which to claim an income tax deduction.

For example, suppose a registrant attends a 2-day seminar at which food is provided on both days and no part of the total fee of $1,070 (including 7% GST) paid by the registrant is identified as being attributable to the food. Assume that the purchaser is a GST registrant that incurs the expense exclusively in the course of commercial activities and claims an ITC of $70. Also assume that the deemed food expense of $50 per day is reasonable in the circumstances and that the registrant is not restricted under any provision other than section 67.1 of the *Income Tax Act* from deducting the seminar expense in determining income. In this case, the application of the formula in subsection 236(1) would result in an ITC recapture of $3.27 (50% x ($100/$1,070) x $70).

With respect to amounts already covered by section 236 (i.e., amounts paid or payable for supplies of food, beverages or entertainment or as reimbursements or allowances in respect of such supplies), the wording changes in subsection 236(1) apply to the determination of net tax for reporting periods ending after October 8, 1998. They also apply to the determination of any rebate under section 261 filed on or after that day in respect of an amount paid or taken into account at any time before, on or after that day as or on account of net tax.

In all other cases, the amendments apply only to amounts that become due, or are paid without having become due, after October 8, 1998.

Subsection 236(1.1) Appropriate Reporting Period

New subsection 236(1.1) sets out the rules identifying the return in which the ITC recapture in respect of meals or entertainment must be reported. These timing rules are the same as in existing subsection 236(1), with one exception relating to persons who cease to be registered in a fiscal year.

In the case where a person ceases to be registered in a fiscal year, existing paragraph 236(1)(*a*) provides that the person must account for the recapture of the ITCs claimed in that year in determining the person's net tax for the person's last reporting period in the year. The amendment alternatively provides that the accounting for the final ITC recapture must be made in the person's return for the last reporting period in which the person is registered.

This change applies to persons who cease to be registered for GST/HST purposes on or after October 8, 1998.

Subsection 236(1.2) Unreasonable Amounts

New subsection 236(1.2) ensures the correct ITC recapture in respect of an expense partly attributable to food, beverages or entertainment when all or part of the expense is found to be unreasonable in the circumstances under subsection 170(2). In that case, the tax calculated on the unreasonable amount is excluded from the calculation of the related input tax credit. Therefore, new subsection 236(1.2) ensures that, in subsection 236(1), the "amount that becomes due from a person or that is a payment made by a person without having become due" is taken to be that amount as otherwise determined minus the unreasonable consideration and any gratuity or tax in respect of the unreasonable consideration.

New subsection 236(1.2) has the same application as the amendment to subsection 236(1).

Clause 55

Net Tax Adjustment if Property Not Exported or Supplied

ETA
236.1

New subsection 236.1 deals with a supply of oil, natural gas, electricity or other continuous transmission commodity as newly defined in subsection 123(1). A supply of such a commodity is a zero-rated supply under new section 15.2 of Part V of Schedule VI under certain circumstances. Specifically, the recipient must be a registrant and must provide the supplier with a written declaration of an intent to export the commodity or exchange it for a commodity of a similar class or kind situated outside Canada. Where the registrant neither exports the commodity nor so exchanges it (i.e., the registrant diverts the commodity to the Canadian market), the registrant is required under new section 236.1 to add an amount to the registrant's net tax. The addition to net tax reflects the fact that the registrant received a cash-flow benefit by acquiring the commodity on a zero-rated basis.

New section 236.1 requires the registrant to add an amount to net tax for the reporting period that includes the earliest day on which tax would have become payable in respect of the supply if it had not been received on a zero-rated basis. The amount required to be added is equal to interest, at the rate prescribed for purposes of paragraph 280(1)(*b*) plus 4% per year compounded daily, calculated on the total amount of tax that would have been payable in respect of the supply. It is computed for the period beginning on the earliest day on which tax would have become payable in respect of the supply and ending on the day on or before which the return for that reporting period is required to be filed. If that addition to net tax results in an amount of an underpayment of net tax, or an overpayment of a net tax refund, for that reporting period, interest and penalty under section 280 accrue on that amount from the day on which the net tax for the reporting period is required to be paid or the overpayment was made.

It should be noted that, while the adjustment to net tax is calculated in the same manner as an interest charge, it is not "interest" for

purposes of the Act and therefore is not subject to waiver or cancellation under section 281.1.

Reference should also be made to a related amendment to section 217 (see commentary on subclause 35(3)). That amendment adds a requirement on the registrant to self-assess tax in respect of the supply if there is a diversion and the commodity is not acquired by the registrant for consumption, use or supply exclusively in the course of commercial activities.

New section 236.1 applies to supplies made after October 1998.

Clause 56

New Reporting Period

ETA
248(3)

Subsection 248(3) addresses the situation where an election to file GST/HST returns on an annual basis ceases to have effect. The existing subsection contemplates only the situation where a person is automatically required to file quarterly as a result of exceeding the annual filing threshold and therefore where the person ceases to be an annual filer as of the beginning of a fiscal quarter. However, new section 363.1 permits a registrant, in certain circumstances, to revoke an annual filing election effective the beginning of any fiscal month. Therefore, subsection 248(3) is reworded to refer to the fiscal month in which the person ceases to be an annual filer. As under the existing wording, the subsection deems the period ending immediately before the day on which the annual filing election ceases to have effect to be a separate reporting period in the year.

This amendment is effective April 1, 1997.

Clause 57

Threshold Amount for Fiscal Quarter

ETA
249(2)

Subsection 249(2) defines the threshold amount of a person for a fiscal quarter, which is relevant to determining whether the person qualifies to file GST/HST returns on a quarterly basis. The amendment to this subsection provides that consideration attributable to the sale of goodwill of a business is excluded from the calculation of this threshold amount.

This amendment applies in determining the threshold amount of a person for any fiscal quarter of the person beginning after December 10, 1998.

Clause 58

Visitor Rebates for Short-term Accommodation

ETA
252.1

Section 252.1 provides a rebate of tax paid on short-term accommodation that is made available to a non-resident. Under the existing section, a rebate is available for campsites only if the campsite is part of a tour package that also includes food and the services of a guide. The amendments to section 252.1 permit visitors to Canada to claim a rebate in respect of the GST/HST on campsite fees, including any charge for hook-ups.

These amendments apply to campsites not included in a tour package where the campsite is made available after June 1998. The extension of the rebate to campsites included in a tour package applies where any accommodation in Canada (whether short-term accommodation or a campsite) that is part of the tour package is first made available after June 1998.

Subclause 58(1)

Definitions "camping accommodation" and "tour package"

ETA
252.1(1)

Subsection 252.1(1) is amended to add a definition of "camping accommodation" for purposes of sections 252.1 and 252.4. Consistent with the definition of "short-term accommodation" in subsection 123(1), the campsite must be made available for a period of less than one month to qualify for the visitor rebate.

The definition "camping accommodation" includes water, electricity and waste disposal services if accessed by means of an outlet or hook-up at the campsite and supplied with the campsite. The term does not include campsite facilities that are included in the definition of "short-term accommodation" as part of a tour package that includes food and guide services. It also does not include campsites that are included in that part of a tour package that is not the taxable portion of the tour package (as defined in subsection 163(3)). For example, it does not include campsites outside Canada.

The definition "tour package" in subsection 252.1(1) is unchanged.

Subclauses 58(2) and (3)

Accommodation Rebate

ETA
252.1(2) and (3)

Subsections 252.1(2) and (3) are amended only to add a reference to "camping accommodation" (newly defined in subsection 252.1(1)). The recipient of camping accommodation is therefore eligible to claim a rebate under those subsections.

Subclauses 58(4) to (8)

Tax Paid in respect of Accommodation

ETA
252.1(4) and (5)

In the case of a separate supply of camping accommodation (i.e., accommodation not included in a tour package), that is not acquired for use in the course of a business, the claimant will be able to choose between claiming the actual amount of tax paid and $1 per night. The amendments to subsection 252.1(4) provide for the calculation of the tax deemed to have been paid on the camping accommodation based on the $1 per night factor.

Similarly, the formula in paragraph 252.1(5)(*a*) for calculating the amount subject to the rebate for tour packages based on a flat amount per night is amended to allow a rebate of $1 per night for each night for which camping accommodation is included in the package. The $5-per-night amount continues in effect for any accommodation included in the tour package that meets the definition of "short-term accommodation".

If the claimant does not elect to use the formula under paragraph 252.1(5)(*a*) in respect of a tour package, the amount of the rebate is determined under the formula under paragraph 252.1(5)(*b*). Under the latter formula, the rebate is equal to 50% of the tax paid on the tour package, pro-rated by the fraction of the total number of nights spent in Canada during the tour that short-term accommodation is provided in Canada as part of the package. The formula is amended to take account of the number of nights that either short term accommodation or camping accommodation is provided in Canada as part of the tour package.

Subclause 58(9)

Multiple Supplies for the Same Night

ETA
252.1(6) and (7)

Subsections 252.1(6) and (7) provide that a consumer may not claim a rebate based on the $5 per-night factor for more than one supply from the same supplier for any given night. In other words, if the consumer books two rooms in the same hotel for the same night and chooses to claim the accommodation rebate based on the number of nights, the consumer will be eligible only for a rebate of $5 for the night and not $10. This restriction avoids the administrative complexity that would otherwise be associated with allowing individuals to use this streamlined method of determining their rebates based on the number of "units" of accommodation supplied as well as the number of nights. Of course, non-residents always have the option of claiming the actual amount of tax on accommodation purchased if they choose not to claim the flat $5-per-night rebate.

These subsections are amended so that the same restrictions apply in respect of camping accommodation.

Subclauses 58(10) to (12)

Rebate Paid by Registrant

ETA
252.1(8)

Under subsection 252.1(8), a supplier of short-term accommodation can, in certain circumstances, credit the recipient the amount of a rebate to which the recipient would be entitled if the recipient were to file the necessary application. The subsection is amended to add references to camping accommodation so that the same rules apply in respect of rebates for camping accommodation.

Clause 59

Restrictions on Claiming Rebates

ETA
252.2

Section 252.2 sets out restrictions on the claiming of rebates under section 252 (non-resident rebate in respect of exported goods) and section 252.1 (accommodation rebates to non-residents). Existing paragraphs 252.2(*b*) and (*c*) provide restrictions on the number of rebate applications that can be filed by a claimant in a given period. The amendment repeals those restrictions on the number of applications per period. This amendment applies for the purpose of determining any rebate for which an application is received at a Revenue Canada office after February 24, 1998.

Section 252.2 is further amended to add references to "camping accommodation" (newly defined in subsection 252.1(1)). This change is consequential on amendments to section 252.1 that extend the rebate for short-term accommodation made available to non-residents to include rebates for camping accommodation. This amendment applies for the purpose of determining any rebate for which an application is received at a Revenue Canada office after June 1998.

Clause 60

Rebate in respect of Foreign Convention

ETA
252.4

Section 252.4 provides for a rebate to a sponsor or unregistered organizer of a foreign convention (as defined in subsection 123(1)) in respect of the GST/HST on certain convention-related expenses referred to as "related convention supplies" (also defined in subsection 123(1)).

Subclause 60(1)

Imported Taxable Supplies that are Related Convention Supplies

ETA
252.4(1)(*c*)

Existing paragraph 252.4(1)(*c*) makes reference to an imported taxable supply (within the meaning of section 217) only in relation to a supply of a service. Since a supply of property can also in some cases fall into the definition of an imported taxable supply, that paragraph is amended to add a reference to "property".

Subclauses 60(2) and (3)

Rebate for Food, Beverages and Catering Services

ETA
252.4(1)(*d*) and (*e*) and 252.4(3)

Subsections 252.4(1) and (3) provide for a rebate to a sponsor and to an organizer, respectively, of a foreign convention, as defined in subsection 123(1). The rebate is in respect of the tax paid by each on "related convention supplies", also as defined in subsection 123(1). The definition "related convention supplies" is amended to include, for purposes of these rebates, food, beverages and catering services (see commentary on subclauses 9(4) and (5)).

Corresponding amendments are made in order that, in the case of a registered organizer's supply to the sponsor, the sponsor may include in its rebate 50% of the tax paid on the portion of the organizer's fee that is reasonably attributable to related convention supplies that are food, beverages or catering services. Where those items are acquired by the sponsor from a registrant other than the organizer or are imported or brought into a participating province by the sponsor, the sponsor is likewise eligible to include in its rebate 50% of the tax paid on them.

Similarly, the rebate under subsection 252.4(3) for an unregistered organizer of a foreign convention is amended to allow the organizer to include in its rebate 50% of the tax paid by the organizer that is

calculated on consideration reasonably attributable to food, beverages or catering services that qualify as related convention supplies.

These amendments apply to foreign conventions for which no admissions are sold before February 25, 1998.

Subclause 60(4)

Rebate Credited by Supplier of Accommodation

ETA
252.4(4)

Subsection 252.4(4) allows a supplier in certain circumstances to credit an unregistered organizer or a sponsor of a foreign convention (as defined in subsection 123(1)) the amount of a rebate under section 252.4 to which the organizer or sponsor would be entitled in respect of supplies made by that supplier. Among the items that qualify for the rebate is short-term accommodation (as defined in subsection 123(1)) that is acquired by the organizer or sponsor, as the case may be, for supply in connection with the convention.

This provision is amended to also make reference to "camping accommodation", as newly defined in subsection 252.1(1), as a consequence of the extension of the visitor rebate in respect of short-term accommodation under section 252.1 to cover camping accommodation.

This amendment applies to supplies of camping accommodation that is acquired for re-supply in connection with a convention that begins after June 1998 and for which no admissions are sold before February 25, 1998.

Clause 61

Employee and Partner Rebates

ETA
253(1)

Section 253 provides for rebates to employees and members of partnerships in respect of employment or partnership-related expenses incurred by them.

Subclause 61(1)

Eligible Recipients

ETA
253(1)(*a*)(i) and (ii)

The amendment to paragraph 253(1)(*a*) of the English version of the Act corrects an editorial error. That paragraph was previously amended only for the purpose of adding a reference to property brought into a participating province. However, in so doing, all of paragraph (*a*) was inadvertently repealed as opposed to only the portion before subparagraph (i), resulting in an incomplete provision in the English version as presently worded. Therefore, subparagraphs 253(1)(*a*)(i) and (ii) of the English version are reinserted as of April 1, 1997, the day the previous amendment to paragraph 253(1)(*a*) came into force. No amendment is necessary to the French version.

Subclauses 61(2) and (3)

Rebate Applications and Reassessments

ETA
253(3), (6) and (7)

The rebate payable under section 253 to an employee or an individual who is a member of a partnership is administered under the income tax system. The rebate application must be filed with the individual's income tax return and subsection 253(5) provides for the application

of relevant provisions of the *Income Tax Act* for purposes of administering the rebate.

Given that the rebate is administered in this manner, subsection 253(3) is amended to permit the Minister of National Revenue to accept an application for the rebate that is filed later than the due date set out in that subsection. This is consistent with the Minister's ability to accept late-filed returns and other documents under the *Income Tax Act* in extraordinary circumstances that have prevented the filer from filing on time.

Consistent with the amendment to subsection 253(3), new subsections 253(6) and (7) are added to deal with the circumstance where a person applies for a reassessment for income tax purposes after the expiry of the normal reassessment period and that reassessment could lead to an adjustment in the allowable rebate under section 253. New subsection 253(6) allows for a reassessment or additional assessment of the rebate at any time on the application of the person. Subsection 253(7) provides that interest on any resulting adjustment is determined on the same basis as if the amount resulted from an income tax assessment under subsection 152(4.2) of the *Income Tax Act* that gave rise to an overpayment under that Act.

These amendments are effective on Royal Assent.

Clause 62

New Housing Rebate for Building Only

ETA
254.1

Existing section 254.1 provides for a rebate to the purchaser of a single unit residential complex or a residential condominium unit located on leased land.

Subclause 62(1)

Definition "long-term lease"

ETA
254.1(1)

The definition "long-term lease" in subsection 254.1(1) is relevant for purposes of subsection 254.1(2). The definition is amended to add the words "licence or similar arrangement" to be consistent with the terminology used elsewhere in Part IX. A similar amendment is made to section 191 (see commentary on subclause 31(3)).

This amendment comes into force on Royal Assent.

Subclause 62(2)

New Housing Rebate for Building Only

ETA
254.1(2)

Existing subsection 254.1(2) provides for a rebate to the purchaser of a single unit residential complex or a residential condominium unit located on leased land. For the purposes of existing section 254.1, "single unit residential complex" is defined to include a multiple unit residential complex that does not contain more than two residential units (i.e., a duplex).

In order to qualify for this rebate, existing paragraph 254.1(2)(*d*) requires the builder of the complex to have been deemed under subsection 191(1) to have made a supply of it upon giving possession of it to a person as a place of residence. However, the rules set out in existing subsection 191(1) do not cover the situation where a builder builds a multiple unit residential complex such as a duplex on leased land. That situation is described in new subparagraph 191(3)(*b*)(i.1) (see commentary on clause 31).

Amended paragraph 254.1(2)(*d*) adds a reference to subsection 191(3). As a result, the purchaser of a residential complex containing two units and situated on leased land will be entitled to

the rebate under section 254.1 provided that all other conditions are met.

This amendment is effective November 26, 1997.

Subclause 62(3)

Rebate in Nova Scotia

ETA
254.1(2.1)

Existing subsection 254.1(2.1) provides for a partial rebate of the provincial component of the HST paid by a purchaser of a qualifying new residence situated in Nova Scotia where the purchaser also qualifies for the rebate of the 7% component of the tax provided under subsection 254.1(2).

Amended subsection 254.1(2.1) clarifies that the rebate of the 8% component of the HST is available only where the builder was required to self-assess the HST as a consequence of having been deemed under section 191 to have made a supply of the complex. The amendment accomplishes this by ensuring that the residence in question was one that was not grandfathered from the application of the 8% tax. In other words, possession of the residence was transferred to the purchaser after March 1997 and that the transfer was not made pursuant to a written agreement between the builder and purchaser entered into on or before October 23, 1996 (the announcement date of the HST).

This amendment is effective April 1, 1997.

Subclause 62(4)

Application to Builder

ETA
254.1(4)

Subsection 254.1(4) provides that the rebate to which a person is entitled under section 254.1 in respect of a new residence may be credited by the builder at the time the residence is supplied to the

person. The existing subsection, however, refers only to the rebate in respect of a single unit residential complex, which does not include a residential condominium unit even though the latter qualifies as well for the rebate. Subsection 254.1(4) is therefore amended to refer to a residential condominium unit. Since this change is consistent with the manner in which the provision has been administered, it is effective January 1, 1991.

Clause 63

Co-operative Housing Rebate in Nova Scotia

ETA
255(2.1)

Existing subsection 255(2) provides a partial rebate of GST, comparable to that under section 254. The rebate applies where an individual purchases a share in a co-operative housing corporation for the purpose of using a new residential unit in the residential complex owned by the corporation as a primary place of residence for the individual, a related individual or a former spouse.

Existing subsection 255(2.1) provides for a partial rebate of the provincial component of the HST to the purchaser of a share in a co-operative housing corporation situated in Nova Scotia where the purchaser also qualifies for a rebate of the 7% component of the tax provided under subsection 255(2).

Amended subsection 255(2.1) clarifies that the partial rebate of the provincial component of the HST is only available where the co-operative housing corporation paid the 8% component of the HST in respect of a taxable supply to the corporation of the complex.

This amendment is effective April 1, 1997.

Clause 64

Rebate to Owner or Lessee of Land
Leased for Residential Purposes

ETA
256.1

Existing section 256.1 provides a rebate of tax to an owner or lessee of certain residential land where tax was paid by the owner or lessee in purchasing or improving the land.

Subclause 64(1)

Supplies of Leases

ETA
256.1(1)

Existing subsection 256.1(1) provides a rebate of tax to an owner or lessee of land where tax was paid by the owner or lessee in purchasing or improving the land. This rebate is available where the land has been leased or sub-leased to a person who will be required to self-assess tax on the use of the land for residential purposes. In these circumstances, the existing rebate under section 256.1 is available to the owner or any other lessee who paid tax when either purchasing or improving the land.

Amended subsection 256.1(1) ensures that this rebate is available where a lessor of the land who is required to self-assess tax assigns the lease as opposed to entering into a sub-lease.

This amendment is effective on January 1, 1991.

Subclause 64(2)

Calculation of Rebate

ETA
Formula under 256.1(1)

Existing subsection 256.1(1) provides a rebate of tax to an owner or lessee of land where tax was paid by the owner or lessee in purchasing or improving the land and a subsequent lessee is deemed to have made a supply of the land and is required to self-assess tax.

The amendment to the description of element A of the formula in subsection 256.1(1) clarifies that the rebate is available for tax on improvements only if the improvements were used in the course of improving the property before the time at which the deemed supply of the complex is made and the requirement to self-assess tax arises.

The amendments to elements A and B of the formula also remove the phrase "total tax charged in respect of the land" to avoid any confusion as to whether tax on improvements is included in the calculation of the rebate. Amended subsection 256.1(1) simply refers to "all tax".

The amendments apply for the purpose of determining any rebate under section 256.1 for which an application is received by the Minister of National Revenue on or after December 10, 1998.

Clause 65

Rebates in respect of Specially Equipped Motor Vehicles

ETA
258.1 and 258.2

New section 258.1 provides for a rebate of tax in respect of certain new motor vehicles specially equipped for use by individuals with disabilities. The rebate is available for the tax on that portion of the purchase price of the vehicle that is attributable to its special features. The rebate also applies to used vehicles that have nevertheless not been used since being specially equipped and to first leases of

qualifying motor vehicles, including the purchase of the vehicle by the first lessee on the exercise of an option to purchase provided for under that lease.

New section 258.1 applies to sales in Canada of qualifying motor vehicles for which any consideration becomes due after April 3, 1998 or is paid after that day without having become due. It also applies to any importation, or bringing into an HST participating province, of a qualifying motor vehicle after that day, and to first leases (including options to purchase provided for under the lease) where the lease is entered into after that day.

Subsection 258.1(1) Meaning of "qualifying motor vehicle"

Subsection 258.1(1) defines "qualifying motor vehicle" as a motor vehicle that is equipped with a device designed exclusively to assist in placing a wheelchair in the vehicle without having to collapse the wheelchair or an auxiliary driving control to facilitate the operation of the vehicle by an individual with a disability. This definition would not include most ambulances, but includes such vehicles as para-transit buses or vans that are equipped with wheelchair lifts.

Qualifying motor vehicles must be new and unused vehicles or used vehicles that have been equipped with one or both of the above-mentioned devices and that have not been used since being so equipped.

Subsection 258.1(2) Qualifying Motor Vehicle Purchased in Canada

Subsection 258.1(2) provides authority for the Minister of National Revenue to pay to the purchaser of a qualifying motor vehicle a rebate equal to tax calculated on a portion of the purchase price (excluding provincial retail sales taxes). Provided the vehicle is equipped with the minimum features necessary to satisfy the definition "qualifying motor vehicle", the rebate is available in respect of all of the vehicle's special features incorporated for its use by or in transporting an individual using a wheelchair, or to equip the vehicle with an auxiliary driving control. In order to qualify for the rebate, the supplier must identify in writing the portion of the purchase price that can reasonably be attributed to the vehicle's special features or adaptations.

Purchasers can apply, in prescribed form, to the Minister of National Revenue for the rebate. Rebate applications have to be filed within four years after tax became payable on the sale of the vehicle. In most cases, however, pursuant to subsection 258.1(3), the rebate may be credited by the supplier at the time of supply.

Subsection 258.1(3) Application to Supplier

Subsection 258.1(3) allows a GST/HST-registered supplier who sells a qualifying motor vehicle to pay or credit to the customer, within four years after the tax on the sale became payable, the amount of the rebate under subsection (2). Amended subsection 234(1) then permits the supplier to claim an equivalent deduction in determining net tax. This eliminates the requirement for purchasers of these vehicles to pay the tax at the point of sale and later apply for a refund.

Subsection 258.1(4) Forwarding of Application by Supplier

Subsection 258.1(4) requires suppliers that provide a point-of-sale rebate under subsection 258.1(3) to transmit the purchaser's rebate application to the Minister of National Revenue. Given that the rebate is credited immediately, the subsection also provides that no interest on the rebate is payable to the purchaser under subsection 297(4). Similarly, given that no tax is payable on the portion of the purchase price that qualifies for the rebate, no input tax credit is available to the purchaser for the tax on that portion of the price.

Subsection 258.1(5) Joint and Several Liability

Subsection 258.1(5) provides that, where a registrant pays or credits a rebate under subsection (3) to a purchaser and the registrant knows or ought to know that the purchaser is not entitled to the rebate or that the amount paid or credited exceeds the rebate to which the recipient is entitled, the registrant and the purchaser are jointly and severally liable to repay, to the Minister of National Revenue, the excess amount paid or credited.

Subsection 258.1(6) Vehicle Purchased Outside Canada or a Participating Province

Subsection 258.1(6) deals with the situation where a qualifying motor vehicle is purchased outside Canada and tax is payable on its importation. It also deals with the situation where a qualifying motor vehicle is purchased then brought into an HST participating province from a non-participating province or from outside Canada and tax is payable under Division IV.1. The subsection provides for a rebate in respect of each such taxable event.

Subsection 258.1(6) provides for a rebate of the tax under Division III or IV.1, as the case may be, calculated on a portion of the value of the vehicle determined for purposes of that tax. The relevant value on which the tax rebate is calculated is that portion (certified by the supplier) of the purchase price of the vehicle (excluding retail sales tax) that is attributable to its special features and that is included in the value on which the tax applies. In the case of an importation of the vehicle, the rebate is available as well for the tax calculated on any applicable import duty on that eligible portion of the vehicle's purchase price that is included in the tax base.

The purchaser must apply, in prescribed form, to the Minister of National Revenue for the rebate under subsection (6) within four years after importing the vehicle or bringing it into the participating province, as the case may be.

Subsection 258.1(7) Lease of Qualifying Motor Vehicle

Subsection 258.1(7) deals with the situation where a qualifying motor vehicle is supplied by way of lease under a written lease agreement entered into after April 3, 1998. Unlike the rebate in respect of purchases, however, the tax relief on the lease payments is provided by way of excluding a portion of the lease payment in determining the tax payable on the supply. Specifically, the tax does not apply to the portion of each lease payment that is reasonably attributable to the vehicle's special features incorporated for its use by or in transporting an individual using a wheelchair or to equip the vehicle with an auxiliary driving control. As in the case of purchased vehicles, the supplier (i.e., the lessor) must identify in writing the portion of the lease payment that is so attributable.

To qualify for the tax relief under this provision, the same condition applies as in the case of purchases of qualifying motor vehicles, namely that the vehicle must be a new vehicle or newly modified (therefore, only the first lessee of the vehicle can take advantage of this provision). The first lessee, however, qualifies for the relief not only on the lease payments under the original lease entered into after April 3, 1998 but also on any lease payments under any subsequent agreement for the renewal or variation of that lease of the same vehicle by that lessee.

Further, if the first lessee who qualifies for the tax relief on a lease of a qualifying motor vehicle exercises an option to purchase the vehicle provided for under that lease agreement (or under an agreement to renew or vary the original lease), the lessee is entitled to claim a rebate under subsection (2) in respect of that purchase (or under subsection (6) if the purchase occurs outside Canada or a participating province). The purchase qualifies for the rebate under subsection (2) or (6) because the vehicle is deemed under subsection (7) to satisfy the conditions of being a "qualifying motor vehicle" (i.e., unused) at the time of that purchase.

Section 258.2 Modification Service

By virtue of section 18.1 of Part II of Schedule VI to the Act, no tax applies to a service provided in Canada of modifying a motor vehicle to adapt it for the transportation of an individual using a wheelchair. Under that section, parts supplied in conjunction with the service are also zero-rated. Further, sections 18 and 34 of that Part ensure that no tax applies to the supply of a service in Canada of installing auxiliary driving controls (or to the supply of related parts) to facilitate the operation of a motor vehicle by a person with a disability.

However, if the same modification service is performed outside Canada, the vehicle is subject to tax, when imported, on the value added to it by that service. There is no existing provision that relieves that tax. Similarly, when a vehicle is so modified outside an HST participating province then brought into the province, there is no existing provision to relieve the provincial component of the HST that applies, when the vehicle is brought in, to the value that was added to it by the modification service.

New section 258.2 addresses these situations in which the same service that would be zero-rated if performed in Canada or in a participating province results in tax when it is performed outside Canada or the participating province. The subsection provides for a rebate of that tax to the extent that the value on which the tax applies is attributable to the value added by the modification service or related parts supplied in conjunction with the service. If a vehicle is both imported into Canada and brought into a participating province, a rebate is available for the tax in respect of each of those taxable events.

The person who acquires the modification service and imports the vehicle into Canada or brings it into the participating province can, within four years after doing so, apply, in prescribed form, to the Minister of National Revenue for the rebate.

New section 258.2 applies to vehicles imported or brought into a participating province after April 3, 1998.

Clause 66

Rebates to Public Service Bodies

ETA
259

Section 259 provides for rebates to charities, substantially government-funded non-profit organizations and other public service bodies (i.e., universities, public colleges, school authorities, hospital authorities and municipalities).

Subclause 66(1)

Definition "non-creditable tax charged"

ETA
259(1)

The term "non-creditable tax charged" refers to amounts that a public service body is or was required to pay as GST/HST (net of input tax credits and certain other amounts) and that are therefore potentially

subject to a rebate under section 259. The amendment excludes from the "non-creditable tax charged" for a claim period any amount of tax that has been adjusted, refunded or credited for which a credit note has been received or a debit note has been issued in accordance with section 232. A related amendment is made to section 232 to deal with the situation where the rebate is paid or applied before the tax adjustment is made (see commentary on clause 49).

This amendment comes into force on December 10, 1998 and applies to amounts adjusted, refunded or credited for which a credit note is received, or a debit note is issued, after that day.

Subclause 66(2)

Restriction

ETA
259(4.01)

New subsection 259(4.01) parallels, for the purposes of the rebate under subsection 259(4), the restrictions that already apply in determining the rebate under subsection (3) because of the exclusions from the definition "non-creditable tax charged".

New subsection 259(4.01) applies for the purpose of determining rebates for which applications are received at a Revenue Canada office on or after November 26, 1997. However, paragraph (*c*) of that subsection applies only to amounts adjusted, refunded or credited for which a credit note is received or a debit note is issued after December 10, 1998.

Subclause 66(3)

Apportionment of Rebate

ETA
259(4.1)

The amendment to paragraph 259(4.1)(*d*) replaces the existing reference in that paragraph to a single amount determined by the formula in subsection 259(4) by a reference to the total of all amounts determined by the formula. This change is consequential on

amendments to that subsection enacted by chapter 10 of the Statutes of Canada, 1997. The change is effective April 1, 1997.

Subclause 66(4)

Rebates in respect of Tax in Participating Provinces

ETA
259(4.2)

Subsection 259(4.2) provides that, with certain specified exceptions, in determining rebates to public service bodies under section 259, no provincial component of the HST is to be included in the rebate. This subsection is restructured so that the exceptions are set out instead in new subsection (4.21).

These changes are consequential on the addition of new subsection 259(4.3), which newly provides for a rebate of the provincial component of the HST to certain bodies in Newfoundland and Labrador. The amendment to subsection 259(4.2) is effective April 1, 1997.

Subclause 66(5)

Exception where Provincial Component of HST is Included in Rebate

ETA
259(4.21)

The general rule under subsection 259(4.2) is that the 8% component of the HST is not included in determining a rebate under section 259. However, there are certain exceptions to that rule, which are set out in existing paragraphs 259(4.2)(*d*) to (*f*). The amendments to section 259 move those exceptions from subsection 259(4.2) to new subsection (4.21).

Under subsection (4.21), the only exceptions made for selected public service bodies (as defined in subsection 259(1)) continue to be for such bodies that are resident in Nova Scotia and for municipalities (one type of public service body) that are resident in New Brunswick. New subsection (4.21) clarifies that the separate exceptions for charities and qualifying non-profit organizations encompass only

those charities and qualifying non-profit organizations that are not also selected public service bodies. New subsection 259(4.3) deals separately with certain charities and qualifying non-profit organizations that also qualify as selected public service bodies.

New subsection 259(4.21) is effective April 1, 1997. However, a special application rule is provided in the case of the qualification that only those charities and qualifying non-profit organizations that are not also selected public service bodies are entitled to claim the 8% component of the HST. That qualification does not apply to any rebate in respect of the provincial component of the HST that was claimed on the basis of the rate for selected public service bodies if the rebate application was received at a Revenue Canada office before November 26, 1997.

Subclause 66(6)

Rebate to Certain Selected Public Service Bodies in Newfoundland

ETA
259(4.3)

Under existing section 259, no rebate of the provincial component of the HST is provided to hospital or school authorities, universities, public colleges or municipalities (all referred to as "selected public service bodies") in Newfoundland and Labrador except in the case of certain designated municipalities as provided for in subsection 259(4.3). The amendment to that subsection additionally enables certain selected public service bodies in that province that also qualify as charities, public institutions or qualifying non-profit organizations (within the meaning of section 259) to claim a rebate, as of April 1, 1997, in respect of the provincial component of the HST. The rebate is equal to 50% of the otherwise non-recoverable provincial component of the HST incurred in respect of inputs related to any exempt activities they undertake otherwise than in the course of fulfilling their responsibilities as a local authority or operating a public hospital, school, university or public college, as the case may be.

For example, a hospital authority in Newfoundland that is a charity or satisfies the definition of "qualifying non-profit organization" might also operate a nursing home. Amended subsection 259(4.3) entitles

the authority to a 50% rebate of the provincial component of the HST incurred on expenses related to the nursing home. This rebate parallels the existing 50% rebate of the federal component of the tax that is already provided in respect of the same activities. The hospital authority continues to be eligible for the 83% rebate under section 259 only in respect of the 7% GST or the 7% component of the HST incurred in respect of inputs related to the operation of the public hospital.

A consequential amendment is made to add subsection 259(4.21), which is intended to clarify that the general rule under that provision applies only to charities and qualifying non-profit organizations that are not also selected public service bodies.

Subclause 66(7)

Application for Rebate

ETA
259(5)

Subsection 259(5) sets out the application requirement for all the rebates under section 259. The amendment to the subsection removes the reference to "non-creditable tax charged" since that expression is not used in relation to the rebate under subsection 259(4) for designated municipalities. This correction applies as of January 1, 1991, the effective date of the amendments to section 259 that introduced the separate rebate provision under subsection 259(4).

Subclause 66(8)

Exception to Limitation Period

ETA
259(5.1)

Under subsection 259(5), persons that have not claimed a rebate for tax that became payable in a particular claim period on an application filed for that period have up to four years to claim the amount in another application. Section 259 is amended to extend the limitation period in cases where a person's supplier is assessed for not having charged the correct tax on a supply to the person and subsequently

does charge the tax after the four-year period for claiming the rebate has expired.

In this circumstance, after paying the amount of the tax that has been assessed the supplier and charged to the person, the person is permitted to claim a rebate in respect of that tax provided that the supplier discloses in writing to that person that the supplier has been assessed the tax. Separate filing limitations apply with respect to the rebate of that tax as compared to the rebate for other amounts to which the person is entitled for the claim period in which that tax is paid. The rebate of the tax charged after the expiry of the normal limitation period must be claimed within one month after the end of the person's claim period in which that tax is paid.

This amendment parallels the exception under paragraph 225(4)(*c*) to the general limitation period for claiming input tax credits. It applies retroactive to January 1, 1991.

Clause 67

Restriction – Selected Listed Financial Institutions

ETA
261.5

Section 261.5 provides that a selected listed financial institution (defined in subsection 225.2(1)) generally is not entitled to claim rebates of amounts in respect of the provincial component of the HST that are specifically identified in that section. New section 263.01 alternatively restricts a selected listed financial institution from claiming any rebate of the provincial component of the HST, subject to certain exceptions. Section 261.5 is therefore made redundant by new section 263.01. Section 261.5 is repealed effective April 1, 1997.

Clause 68

Restriction on Rebate

ETA
263

Section 263 provides that a person is not entitled to take advantage of specified provisions of Part IX of the Act, most of which provide for rebates of tax, to the extent that the tax has otherwise been refunded, remitted or credited to the person, or to the extent that the person was otherwise entitled to an input tax credit in respect of the tax.

Subclause 68(1)

Rebate where Abatement Previously Granted under the *Customs Act*

ETA
263

Among the provisions that are cited in the preamble to section 263 are subsections 215.1(3) and 216(7), which do not provide for the payment of a refund of tax but rather the granting of an abatement of tax. The abatement of tax is determined and administered under the *Customs Act* as though the tax were a duty imposed under that Act. The reference to "refund" in the preamble to section 263 is therefore replaced with the more accurate reference to "refund or abatement".

This amendment applies on Royal Assent.

Subclause 68(2)

Rebate where Credit or Debit Note Previously Issued

ETA
263(*d*)

New paragraph 263(*d*) adds the condition that a rebate of tax shall not be paid to a person to the extent that the person has already received a refund or adjustment in respect of the same tax under section 232. A related amendment is made to section 232 to deal with the case where the person receives the rebate before the credit

note is received by the person, or the debit note is issued by the person, in respect of the tax.

This amendment is effective December 10, 1998.

Clause 69

Restriction on Rebate for Selected Listed Financial Institutions

ETA
263.01

Subsection 263.01(1) General Restriction

Generally, a selected listed financial institution (defined in subsection 225.2(1)) is not entitled to claim any input tax credits or rebates in respect of the 8% provincial component of the HST paid or payable by the financial institution. Instead, the financial institution is allowed to deduct the 8% component in determining a special adjustment to its net tax that is provided for under subsection 225.2(2). Given this net tax deduction, there generally is no need to provide the institution with a rebate under any other provision of Part IX for amounts paid or payable by the institution in respect of the provincial component of the HST.

New subsection 263.01(1) restricts a person from claiming rebates provided in the Act, and certain refunds or abatements administered under the *Customs Act*, to the extent that these are in respect of the provincial component of the HST that was paid or payable at a time when the person was a selected listed financial institution. Exceptions to this restriction are provided for rebates under sections 252.4 and 252.41, which pertain to sponsors of foreign conventions and non-resident unregistered recipients of installation services, respectively. Exceptions are also set out in new subsections 263.01(2) and (3).

The restriction under subsection 263.01(1) applies only in respect of property or a service acquired or imported by the institution for consumption, use or supply in the course of a business of the institution or an adventure or concern in the nature of trade of the institution. Therefore, the restriction does not apply to a selected

listed financial institution that is an individual (e.g., an insurance broker who is a sole proprietor) who is claiming, for example, a new housing rebate under section 254.

New subsection 263.01(1) is effective April 1, 1997.

Subsection 263.01(2) Exception for Insurers

New subsection 263.01(2) provides that the restriction under subsection (1) does not apply to a rebate of certain tax paid or payable by a selected listed financial institution that is an insurer. Specifically, the restriction does not apply to rebates of tax in respect of property or a service acquired or imported by the insurer exclusively and directly for consumption, use or supply in the course of investigating, settling or defending an insurance claim, other than a claim in respect of accident and sickness or life insurance. In the case of this tax, the insurer is not able to claim a special adjustment under subsection 225.2(2) in determining its net tax. Rather, the insurer recovers the tax only to the extent that the insurer is entitled to a rebate or input tax credit in respect of the tax under the general rules of Part IX.

New subsection 263.01(2) is effective April 1, 1997.

Subsection 263.01(3) Exception for Surety

New subsection 263.01(3) provides that the restriction under subsection (1) with respect to the claiming of rebates does not apply to certain rebates claimed by a selected listed financial institution that is a surety (within the meaning of new subsection 184.1(2)). Specifically, the surety is not restricted in claiming rebates of the provincial component of the HST in respect of property or services (other than capital property or improvements to capital property) acquired or imported by the surety exclusively and directly for consumption, use or supply in the course of carrying on certain construction to which new subsection 184.1(2) applies. That subsection applies where the surety carries on construction in satisfaction of its obligations under a construction performance bond. The surety is not entitled to a special adjustment in respect of the tax on such property or services in determining its net tax. Instead, the surety recovers the tax only to the extent that it is entitled to claim rebates or input tax credits in respect thereof.

New subsection 263.01(3) applies in relation to any property or service acquired or imported by a surety for consumption, use or supply in the course of carrying on construction if new paragraph 184.1(2)(*a*) applies to the surety in relation to that construction (see commentary on clause 28 for the application of that paragraph).

Clauses 70 and 71

Estate of a Deceased Individual

ETA
267

Existing section 267 provides that, with certain exceptions, provisions of Part IX apply to the estate of a deceased individual as though the estate were the individual and the individual had not died. Section 267 is subject to sections 267.1 (trustees of a trust), 269 (distribution by trust) and 270 (certificates for personal representatives).

Section 267 is amended to clarify that the rule that the estate should be treated as though it were the individual also does not apply in section 279 where the reference to a "person" who makes a return should continue to be read as a reference to the estate rather than the deceased individual. In that regard, a related clarification is also made in section 279 to specify that the personal representative of the estate is deemed to be a person who is authorized to sign the GST/HST return of the estate.

These amendments apply on Royal Assent.

Clause 72

Penalty and Interest

ETA
280 of the French Version

Section 280 imposes penalty and interest charges where a person has failed to pay or remit GST/HST or instalments on account of

GST/HST. Subsection 280(1) contains general rules that deal with the non-remittance of amounts owing under Part IX of the Act. Subsections 280(1.1) and (2) override the general rule for specific situations, namely the non-payment of an amount of interim net tax by a selected listed financial institution (defined in subsection 225.2(1)) and overdue or deficient instalments owing by any person.

The English versions of subsections 280(1), (1.1) and (2) use the expression "shall pay" rather than "liable to pay". When the former expression is used in the English version of the Act, the French version usually uses the expression "*tenue de payer*" or similar wording. Therefore, for consistency of terminology, the French versions of subsections 280(1), (1.1) and (2) are amended by replacing the word "*passible*" with the expression "*tenue de payer*". Similar changes are also made to subsection 34(2). Other minor wording changes are made to the French version of subsection 280(2) for greater clarity.

These amendments come into force on Royal Assent.

Clause 73

Requirement to Provide Documents or Information

ETA
289(1)

Subsection 289(1) provides that, despite any other provision of Part IX, the Minister of National Revenue may by notice require that any person provide information or any document relating to the administration or enforcement of Part IX. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 289(2) to (6) must be followed.

Subsection 289(1) is amended, for greater certainty, to explicitly provide that the administrative and enforcement purposes for which it applies includes the collection of any amount payable or remittable under Part IX by any person. Therefore, it clarifies that an information demand can be made of a person for the purpose of

collecting the debt of a third party. The restrictions, however, on information demands relating to unnamed persons remain. This clarification is also made under clause 133 to the parallel provision of the *Income Tax Act* (i.e., section 231.2 of that Act).

This amendment comes into force on Royal Assent.

Clause 74

Copies

ETA
291(1)

Subsection 291(1) was amended by section 283 of the *Income Tax Amendments Act, 1997* (c. 19, S.C., 1998). In the amended subsection 291(1), the word "audited" was inadvertently omitted. Therefore, this clause adds the word "audited" to subsection 291(1) to correct the oversight.

This amendment applies to copies and print-outs made after June 18, 1998, the day on which the *Income Tax Amendments Act, 1997* received Royal Assent.

Reference should also be made to an amendment to subsection 291(1) under clause 137 that is conditional on the coming into force of another amendment to the subsection contained in paragraph 156(*h*) of the *Canada Customs and Revenue Agency Act*. That paragraph replaces the reference to "Department" in subsection 291(1) with a reference to "Agency". Therefore, if the version of subsection 291(1) as set out in this clause, which uses the term "Department", comes into force after the said paragraph 156(*h*), it would change the reference to "Agency" back to "Department". To avoid that circumstance, the conditional amendment under clause 137 replaces subsection 291(1), as amended by this clause, with the version of the subsection that uses the term "Agency".

Clause 75

Meaning of "foreign-based information or document"

ETA
292(1)

Under section 292, the Minister of National Revenue may, by notice and subject to judicial review, require any person resident in Canada or a non-resident person who carries on business in Canada to provide any "foreign-based information or document". The expression "foreign-based information or document" is defined in subsection 292(1) as being any information or document available outside Canada that may be relevant to the administration or enforcement of Part IX of the Act.

Subsection 292(1) is amended to clarify that the administrative and enforcement purposes for which this subsection applies includes the collection of any amount payable or remittable under Part IX by any person. This clarification is also made under clause 133 to the parallel provision of the *Income Tax Act* (i.e., section 231.6 of that Act).

This amendment is effective on Royal Assent.

Clause 76

Solicitor-Client Privilege – Examination of Documents

ETA
293(4)

Subsection 293(4) requires a lawyer to set aside and conserve a document in respect of which the lawyer has claimed solicitor-client privilege. Amended subsection 293(4) clarifies that a lawyer may claim solicitor-client privilege under this provision for both current and former clients of the lawyer. This amendment also clarifies that such a claim may be made both in the course of an on-site inspection under section 288 and following a requirement in writing to provide a document under section 289.

This amendment comes into force on Royal Assent.

Clause 77

Period for Assessment

ETA
298

Section 298 sets out the limitation periods for assessments and reassessments under Part IX of the Act.

Subclauses 77(1) and (2)

Period for Assessment

ETA
298(1) and (2)

Subsections 298(1) and (2) set out the limitation periods for making assessments of tax or net tax and rebates respectively under Part IX. These subsections are amended to add a reference to new subsection 298(6.1) (see commentary on subclause 77(4)).

The amendments apply to assessments in respect of which an appeal is disposed of after the day on which these amendments are assented to, regardless of when the appeal was instituted.

Subclause 77(3)

Disposition of Appeal on Consent

ETA
298(3)

Existing subsection 298(3) overrides the normal limitation period for reassessments made to give effect to a decision on an objection or an appeal. Amended subsection 298(3) also overrides the normal limitation period where a reassessment of a person is made for the purpose of disposing of an appeal on the written consent of the person. This makes it easier to implement, without court

proceedings, settlements mutually agreed upon by the taxpayer and the Minister of National Revenue. This provision for the disposition of an appeal parallels existing subsection 169(3) of the *Income Tax Act*.

This amendment comes into force on Royal Assent.

Subclause 77(4)

Alternative Argument in Support of Assessment

ETA
298(6.1)

New subsection 298(6.1) is added to clarify that the Crown has the right, on an appeal of a GST/HST assessment, to advance an alternative argument in support of that assessment even if the normal reassessment period has expired. The amendment is made in light of remarks by the Supreme Court of Canada in the case of *The Queen v. Continental Bank of Canada*, which might otherwise have been interpreted as calling this right into question. The provision expressly recognizes the Court protection afforded taxpayers that an alternative argument nevertheless cannot be advanced to the prejudice of the right of a taxpayer to introduce relevant evidence to rebut the argument.

Subsection 298(6.1) applies to any assessment in respect of which an appeal is disposed of after the day on which this subclause is assented to, regardless of when the appeal was instituted.

Clause 78

Extension of Time by Minister

ETA
303(3) and (4)

Section 303 allows a person to apply to the Minister of National Revenue for an extension of time to file a notice of objection to an assessment, or a request for an adjustment.

Subsection 303(3) How Application Made to Minister

Subsection 303(3) sets out how the application for an extension of time to file a notice of objection or request for adjustment must be made. The amendment to this subsection provides that the application must be sent to the Chief of Appeals in a District Office or Taxation Centre of the Department of National Revenue, rather than to the Deputy Minister, and must be accompanied by one copy of the notice of objection or request, rather than two copies. This amendment comes into force on Royal Assent.

Subclause 78(2) contains a further amendment to subsection 303(3) that is conditional on the coming into force of section 152 of the *Canada Customs and Revenue Agency Act*. That section replaces the existing definition of "Department" in subsection 123(1) of *the Excise Tax Act* with a definition of "Agency".

The version of subsection 303(3) that is enacted by subclause 78(1) retains the reference to "Department". Therefore, on the later of the day on which that subclause comes into force (i.e., is assented to) and the day on which section 152 of the *Canada Customs and Revenue Agency Act* comes into force, subsection 303(3) is further amended by replacing the reference in the subsection to "Department" with a reference to "Agency".

Reference should also be made to clause 136, which contains another conditional amendment related to subsection 303(3) (see commentary on that clause).

Subsection 303(4) Exception

Subsection 303(4) allows the Minister of National Revenue to accept an application under subsection 303(1) that is not made or sent in the manner specified in subsection 303(3). The amendment to subsection 303(4) is consequential on the amendment to subsection (3). The latter amendment removes the requirements to send duplicate copies and to use registered mail and replaces the requirement to send the documents to the Deputy Minister with the requirement to send them to the Chief of Appeals in a District Office or Taxation Centre.

This amendment to subsection 303(4) comes into force on Royal Assent.

Clauses 79 and 80

How Application Made to Tax Court

ETA
304(2) and 305(3)

Section 304 allows a person to apply to the Tax Court of Canada for an extension of time to file an objection or request an adjustment under subsection 274(6), if the person has previously applied to the Minister of National Revenue for such an extension and that application was refused or not responded to within 90 days. Subsection 304(2) sets out how the application to the Tax Court is to be made.

Similarly, section 305 allows a person to apply to the Tax Court for an extension of time to bring an appeal to the Court, if the person has not done so within the time limits set out in section 306. Subsection 305(3) sets out how that application is to be made.

To avoid inconsistencies between these provisions and the *Tax Court of Canada Act*, subsections 304(2) and 305(3) are amended to provide that the application in question is to be filed in the Registry of the Tax Court in accordance with the provisions of that Act.

Similar changes are also made under clauses 129 and 130 to the parallel provisions of the *Income Tax Act* (i.e., subsections 166.2(2) and 167(3) of that Act) as well as under clause 123, which amends subsection 33.2(3) of the *Cultural Property Export and Import Act*.

These amendments come into force on Royal Assent.

Clause 81

Court Costs

ETA
313(4)

New subsection 313(4) ensures that where court costs are awarded to the Crown during the litigation of a matter to which Part IX applies, the collection provisions of Part IX apply to those costs as though they were a debt owing to Her Majesty under that Part. This subsection parallels existing section 222.1 of the *Income Tax Act*.

New subsection 313(4) applies to amounts that are payable after Royal Assent, regardless of when the amounts became payable.

Clause 82

Certification of Amount Payable by Tax Debtor

ETA
316

Section 316 provides a mechanism by which the Minister of National Revenue may initiate collection proceedings against a tax debtor in respect of tax payable or remittable under Part IX. This mechanism requires that a certificate issued by the Minister indicating the amount payable by the debtor be registered in the Federal Court.

Subclause 82(1)

Certificate

ETA
316(1)

To ensure consistency of terminology within section 316, the French version of subsection 316(1) is amended to replace the word "*attestation*" with the word "*certificat*".

This amendment comes into force on Royal Assent.

Subclause 82(2)

Charge on Property

ETA
316(4) to (10.1)

Section 316 provides authority for a certification by the Minister of National Revenue evidencing various amounts payable by a tax debtor under Part IX to be registered with the Federal Court. The section also provides that once issued, the certificate may be registered in a province for the purpose of creating a charge that binds land in that province.

The amendments under subclause 82(2) relate to the registration of a certificate, writ or any notification thereof (each of which is referred to as a "memorial"). Where a memorial is registered using the same judicial and administrative procedures as may be set out by the relevant provincial law for creating a lien, charge, priority or binding interest in the province, the memorial is equally effective for the purpose of binding any property in that province.

New subsection 316(10.1) also provides that a lien, charge, priority or binding interest created under amended subsection 316(6) is deemed to give rise to a secured claim in bankruptcy upon registration in accordance with section 87 of the *Bankruptcy and Insolvency Act* under both paragraphs 86(2)(*a*) and (*b*) of that Act. As provided in that Act, the order of registration will determine priority among secured claims.

Finally, these amendments introduce the concept of a priority on property (or on an interest in property) in addition to the existing references to a charge or lien, in order to reflect the *Quebec Civil Code's* nomenclature.

These amendments to section 316 parallel similar amendments made to section 223 of the *Income Tax Act* (by c. 19, S.C., 1998). They come into force on Royal Assent.

Subclause 82(3)

Details in Certificates and Memorials

ETA
316(11)

Existing subsection 316(11) specifies how amounts payable, and the interest calculated on those amounts, are to be set out in a certificate, memorial, writ or document issued by the Minister of National Revenue for the purpose of collecting an amount certified. For greater certainty, this provision is amended to also specify how the rate of an accumulating penalty is to be set out.

This amendment comes into force on Royal Assent.

Clause 83

Garnishment

ETA
317

Section 317 authorizes the collection of any amount payable under Part IX by way of garnishment. The amendments to subsections 317(1) and (3) extend the period for which a garnishment notice issued under either of those subsections is effective from 90 days to one year. This avoids the need to reissue a notice every 90 days when a series of payments such as salary or interest are garnished throughout a year.

In addition, the changes to subsection 317(1), and to subsections (2), (3), (6), (10) and (11), remove the requirement that the notice be served personally or sent by registered or certified mail. As a result, the notice may be sent by regular mail. As well, the amendments remove in some cases references to the notice being in the form of a letter.

Existing subsection 317(4), which contains the definitions "secured creditor" and "security interest", is repealed given that those

definitions are newly added to subsection 123(1) so as to apply for purposes of Part IX of the Act generally.

New subsection 317(12) is added to ensure that the provincial Crown, as a third party owing amounts to a tax debtor, is bound by any garnishment notices in respect of the amounts issued under Part IX by the Minister of National Revenue. This amendment is in response to a Federal Court – Trial Division decision, which held that the garnishment provisions of Part IX were not binding in respect of a payment owing to a tax debtor by a province as nothing in the Part expressly made the provisions applicable to the Crown in right of a province. New subsection 317(12) parallels existing subsection 224(1.4) of the *Income Tax Act*.

Other changes of an editorial nature are made to section 317, including clarifications to the French version of paragraph 317(2)(*a*) and of subparagraph (2)(*b*)(i) to ensure consistency with the English version.

These amendments come into force on Royal Assent.

Clause 84

Moneys Seized from Tax Debtor

ETA
320(1)

Subsection 320(1) provides that the Minister of National Revenue may, in certain circumstances, require that a person holding moneys that are restorable to a tax debtor pay the monies over to the Receiver General on account of the tax debtor's liability. The amendment to this subsection removes the reference to the written requirement of the Minister being in the form of a letter and served personally or sent by registered or certified mail. As a result, the written notice of the requirement may be sent by regular mail.

This amendment is consistent with similar changes made to section 317. These changes come into force on Royal Assent.

Clause 85

Person Leaving Canada

ETA
322

Subsection 322(1) provides that if the Minister of National Revenue suspects that a person has left or is about to leave Canada, the Minister may demand payment of taxes, net tax, penalties, interest and amounts under section 264 for which the person is liable or would be liable if the time for payment had arrived. The subsection is amended to clarify that the Minister may demand payment of any amount for which a person is liable under Part IX of the Act or for which the person would be so liable if the time for payment had arrived. There is no longer any specific reference to tax, net tax, penalties, interest or amounts under section 264. The reference to the demand being sent by certified mail is also removed.

Accordingly, subsection 322(2) is also amended to refer generally to any amount required under subsection (1) to be paid. Editorial changes are concurrently made to subsections 322(1) and (2).

These amendments come into force on Royal Assent.

Clause 86

Fair Market Value of Undivided Interest

ETA
325(1.1)

Section 325 provides rules under which a transferee of property may be liable for unpaid taxes of the transferor when the two parties are not dealing at arm's length. In general, this liability is limited to the amount by which the fair market value of the property (at the time it is transferred) exceeds the consideration, if any, given for the property. New subsection 325(1.1) provides a rule for determining the fair market value of a proportionate undivided interest in property for the purposes of applying section 325.

Under new subsection 325(1.1), the fair market value of each proportionate undivided interest in a property is deemed to be equal to that same proportion of the fair market value of the whole of the property. For example, if a husband and wife each have a 50% undivided interest in real property, the fair market value of each of their interests is deemed to be equal to 50% of the fair market value of the real property. This rule is subject to the special rule in subsection 325(4) that deems the value of the interest to be nil when it is transferred pursuant to a decree, order or judgment of a tribunal on a marriage breakdown.

Clause 128 adds a parallel provision to the *Income Tax Act* as new subsection 160(1.2).

This amendment applies to transfers of property made after Announcement Date.

Clause 87

Offences

ETA
327

Section 327 sets out the criminal offences for certain tax evasion activities.

Subclause 87(1)

Evading Payment or Remittance or Obtaining Rebate where Ineligible

ETA
327(1)(*b*)

Paragraph 327(1)(*b*) has the effect of providing that every person who disposes of a document in any way or who makes, or assents to or acquiesces in the making of, a false statement or omission in a document in order to avoid paying or remitting tax or net tax or to receive a rebate to which the person is not entitled is guilty of a criminal offence. The amendment to this paragraph adds, for consistency with the terminology used elsewhere in Part IX, a

reference to tax or net tax "payable" rather than "imposed" and to both a "rebate" and a "refund".

This amendment comes into force on Royal Assent.

Subclause 87(2)

Penalty on Conviction

ETA
327(3)

Subsection 327(3) ensures that a person who is convicted of an offence under section 327 is relieved of the civil penalty under section 284 (failure to provide information) in respect of the same matter unless a notice of assessment for that penalty preceded the laying of the information or the making of the complaint giving rise to the conviction. This subsection is amended to provide the same relief in respect of the civil penalties under sections 283 (failure to answer demand for a return) and 285 (false statements or omissions).

This amendment comes into force on Royal Assent.

Clause 88

Definition "retail sales tax"

ETA
348

Section 348 defines terms used in Division X of Part IX of the Act. That Division sets out the transition rules applicable when a province becomes a participating province under the HST.

The definition "retail sales tax" is added to section 348. The definition is relevant for purposes of new subsection 352(1.1) and new section 354.1. It is intended to refer to any provincial retail sales tax.

This definition is added as of March 20, 1997, the date of enactment of section 348.

Clause 89

Supply of Residence under Pre-announcement Date Agreement

ETA
351(1) and (2)

Subsections 351(1) and (2) grandfather from the provincial component of the HST sales of new residences made under agreements in writing entered into on or before October 23, 1996, the announcement date of the HST. Paragraphs 351(1)(*a*) and (*b*) are amended to clarify that the grandfathering applies equally to sales of only the building in which the residential unit is located, which occurs when the purchaser leases the land on which the building is situated from the builder instead of also purchasing the land. In these circumstances, the sale of the building itself is exempt but, absent this grandfathering rule, the builder would have to self-assess the provincial component of the HST under section 191 of the Act upon giving possession of the residential unit to the purchaser in a participating province after March 1997.

Paragraph 351(1)(*c*) is amended to ensure that grandfathering is available in the above circumstances where the builder is deemed under subsection 191(1) to have made a supply of the complex in which the unit is situated "at any time" as a consequence of giving possession of the residential unit to the purchaser of the unit. The existing wording refers only to a deemed supply under that subsection made "before" such possession is given.

Finally, a consequential amendment is made to subsection 351(2) to delete the specific reference to the sale of a single unit residential complex so that the subsection also applies to a sale of only the building or part of the building in which the residential unit is situated, as described above.

These amendments are deemed to have come into force on March 20, 1997, the date of enactment of section 351.

Clause 90

HST Transition Rules for Personal Property and Services

ETA
352

Section 352 sets out the general HST transition rules pertaining to supplies of personal property and services where the transactions straddle the implementation date of the HST.

Subclause 90(1)

Transfer of Personal Property Before Implementation

ETA
352(1)

Subsection 352(1) is intended to grandfather from the provincial component of the HST certain sales in Canada of goods. The grandfathered sales are of goods that are delivered to the purchaser, or the ownership of which is transferred to the purchaser, in an HST participating province before the implementation date for the province (i.e., when the province became an HST participating province) in accordance with a written agreement entered into before that day. The subsection is therefore amended to refer to the supply being made before that implementation date as opposed to the "announcement date" of the HST, October 23, 1996.

This change is deemed to have come into force on March 20, 1997, the date of enactment of subsection 352(1).

Subclause 90(2)

Exercise of Option to Purchase

ETA
352(1.1)

New subsection 352(1.1) ensures that if provincial retail sales tax applied prior to the implementation date for a province (i.e., when the province became an HST participating province), to a sale of goods

resulting from the exercise after that implementation date of an option to purchase the goods provided for in a lease, the provincial component of the HST does not also apply to the sale.

Subsection 352(1.1) is deemed to have come into force on March 20, 1997, the date of enactment of section 352.

Subclause 90(3)

Imported Taxable Supply under Pre-implementation Date Agreement

ETA
352(2)

Subsection 352(2) is intended to grandfather from the provincial component of the HST certain imported taxable supplies (as defined in section 217). The grandfathered sales are of goods the physical possession of which is transferred to the purchaser in an HST participating province before the implementation date for the province (i.e., when the province became an HST participating province) in accordance with a written agreement entered into before that day. The subsection is therefore amended to refer to the supply being made before that implementation date as opposed to the "announcement date" of the HST, October 23, 1996.

This change is deemed to have come into force on March 20, 1997, the date of enactment of subsection 352(2).

Subclause 90(4)

Prepaid Subscriptions

ETA
352(8)

Subsection 352(8) provides a general HST transition rule applicable to certain sales of goods in participating provinces where payment for the goods became due, or was made without having become due, on or after February 1, 1997 and before April 1, 1997. The subsection applies where delivery and transfer of ownership of the goods occurs on or after April 1, 1997.

Subsection 352(7) sets out a special transition rule applicable to sales of newspapers, magazines or other periodical subscriptions. It provides that the provincial component of the HST does not apply to any payment for such a taxable supply where the payment is made before April 1, 1997, regardless of when the publications are delivered.

The grandfathering rule in subsection 352(7) is intended to override the general rule in subsection 352(8) only with respect to amounts actually paid before April 1, 1997 for subscriptions. Therefore, subsection 352(8) should still apply to any amount that becomes due, but is not paid, before April 1, 1997. The wording changes to subsection 352(8) are meant to clarify, for greater certainty, that the subsection may apply in respect of a supply to which subsection 352(7) applies, but not to the consideration referred to in subsection 352(7).

This amendment is deemed to have come into force on March 20, 1997, the date of enactment of these provisions.

Clause 91

Leased Goods Provided Together with Services

ETA
354(4.1)

Generally, where a taxable supply by way of lease, licence or similar arrangement is made in a participating province or, in some cases, in a non-participating province to a person who is resident in a participating province, and consideration for the supply is attributable to a period after March 1997, the provincial component of the HST will apply. However, the provincial component of the HST is not payable where the payment is attributable to a period that begins before April 1, 1997 and ends before April 30, 1997. The latter exception could lead to some difficulty where a supply of a service is provided together with a lease of property.

The HST transition rules generally provide that HST is payable on the portion of the payment attributable to services performed after March 1997. However, the payment relating to the lease of the

property for the period ending before April 30 is not subject to the provincial component of the HST but may be subject to provincial retail sales tax (PST).

New subsection 354(4.1) provides an exception to the rule under subsection 354(4). The exception is that where leased property is provided together with services and the charges for the lease and the services are included in the same invoice, HST also applies to the portion of the lease payment attributable to the period after March 1997. In other words, all the charges on the same invoice that relate to a period after March 1997 are subject to HST.

For example, assume a person in a participating province were billed in advance, in March 1997, for the rental of a telephone and for a telecommunication service covering the period of March 15, 1997 to April 14, 1997. The applicable PST would be charged on the portion of the payment relating to the period in March and HST would apply on the portion of the payment relating to the period in April.

New subsection 354(4.1) is deemed to have come into force on March 20, 1997, the date of enactment of section 354.

Clause 92

Leases of Specified Motor Vehicles

ETA
354.1

Section 354 sets out rules for determining the tax treatment of leases during the transition from the retail sales tax systems to the HST in the participating provinces. Generally, under these transition rules, lease payments attributable to a period after the implementation date of the HST (April 1, 1997) become subject to the HST and the provincial retail sales tax ceases to apply.

Where a supplier has accepted a trade-in as full or partial consideration for a lease of a motor vehicle, the value of that vehicle on which the provincial retail sales tax was calculated may not be the same as that on which the provincial component of the HST is calculated. In these cases, new section 354.1 is intended to ensure

that where a recipient is required to pay the HST on a specified motor vehicle lease entered into before the day the province became a participating province, the value on which the provincial component of the HST is calculated will not exceed the value (excluding GST) on which the provincial retail sales tax would have been calculated. The term "specified motor vehicle" is defined in subsection 123(1) and generally refers to any motor vehicle that is required to be registered in a provincial vehicle registry.

New section 354.1 is deemed to have come into force on March 20, 1997, the date of enactment of Division X of Part IX of the Act.

Subclauses 92(3) and (4) provide special transition rules that enable a person to take advantage of new subsection 354.1. Specifically, they allow a person to claim a refund of HST under section 261, or a supplier to make an adjustment of HST under section 232, after the normal period for claiming the refund or making the adjustment has expired. The circumstance in which the limitation period is extended is where, because of new section 354.1, the HST collectible is less than the HST that was charged or collected. In that case, the refund can be claimed or the adjustment made up to two years after the date of enactment of these clauses.

Clause 93

Transitional Instalments

ETA
363

Annual filers are required in most cases to make their net GST/HST remittances in instalments throughout the year. Section 363 sets out rules for determining a registrant's GST/HST instalments in the transitional year that includes April 1, 1997, the day on which the HST was implemented.

Subclauses 93(1) to (5)

Transitional Instalments for Selected Listed Financial Institutions

ETA
363(2)

Subsection 363(2) provides transition rules for determining the net tax instalments of a selected listed financial institution (defined in subsection 225.2(1)) for fiscal quarters ending after March 31, 1997 in a fiscal year ending after that day. Each paragraph of subsection 363(2) provides for a different method by which the institution can calculate its instalments for those fiscal quarters. The institution's total net tax is determined according to the rules set out under subsection 225.2(2).

Amendments are made to the formula in subsection 225.2(2) to delete certain superfluous references (see commentary on subclauses 44(1) and (2)). As a consequence, subclauses 93(1) to (3) and (5) amend the relevant portion of the formulae contained in subsection 363(2) to similarly remove the superfluous references.

In addition, subclause 93(4) amends the French version of subparagraph (i) of the description of element E of the formula in paragraph 363(2)(*d*) to add the word "*donnée*" after the words "*période antérieure*". This clarifies that the reporting period referred to in that instance is the same period referred to generally in the paragraph as the specified earlier period.

These amendments are deemed to have come into force on March 20, 1997, the date of enactment of section 363.

Subclause 93(6)

Exclusions from Instalments

ETA
363(4)

New subsection 363(4) excludes from the calculation of the instalments of a selected listed financial institution (defined in subsection 225.2(1)) amounts of tax in respect of property or a

service acquired, imported or brought into a participating province otherwise than for consumption, use or supply in the course of an endeavour (within the meaning assigned by subsection 141.01(1)). Therefore, an individual that qualifies as a "selected listed financial institution" (e.g., a sole proprietor who operates a brokerage business in both a participating and a non-participating province) need not include in the individual's net tax adjustment any tax in respect of property or a service that is for the individual's personal use.

This amendment is deemed to have come into force on March 20, 1997, the date of enactment of section 363.

Clause 94

Elections

ETA
363.1 and 363.2

Section 363.1 Election for Shorter Reporting Period

Sections 246 and 247 set out the rules that permit registrants who have annual or quarterly reporting periods to elect to file on a quarterly or monthly basis respectively. Under these rules, such a change in reporting period must take effect on the first day of a fiscal year of the person.

An HST transitional measure is provided for the year in which a province becomes a participating province. The purpose of the measure is to allow registrants in such a province who are generally in refund positions (e.g., farmers and fishermen) to accelerate the receipt of refunds and mitigate any possible cash-flow implications of harmonization. Under new section 363.1, any person who is registered as of April 1, 1997 and is a quarterly filer resident in a participating province may make an election to file on a monthly basis without having to wait until their next fiscal year beginning after that day. The election to file on a monthly basis can take effect the first day of any fiscal quarter of the registrant that begins on or after April 1, 1997 and before April 1, 1998.

Similarly, the section provides that any person who is a registered annual filer as of April 1, 1997 and who is resident in a participating province can elect to file on a quarterly or monthly basis as of the first day of any fiscal quarter that begins on or after April 1, 1997 and before April 1, 1998.

Under amended subsection 248(3), if an annual filer elects to change to quarterly or monthly reporting periods effective after the beginning of the person's fiscal year, the period beginning on the first day of that fiscal year and ending immediately before the fiscal quarter in which the election becomes effective is deemed to be a separate reporting period. Therefore, the person must file a separate return within one month following the end of that separate period.

All elections to file quarterly or monthly must be made in prescribed form and manner and be filed within the same time frames as is required under existing section 250 except that, in these cases, they would specify the effective date as the first day of a fiscal quarter or fiscal month, as the case may be, as opposed to a fiscal year.

New section 363.1 is effective April 1, 1997.

Section 363.2 Revocation of Election for Streamlined Accounting

Another HST transitional rule is provided under new section 363.2. This section permit registrants in a participating province who are using a streamlined accounting method prescribed under section 227 (i.e., the "Quick Method" or "Special Quick Method") immediately before the province becomes a participating province (i.e., before April 1, 1997) to revoke their election to use that method earlier than is allowed under the normal rules. Specifically, registrants in this situation may revoke their election effective as of the first day of any fiscal month beginning before April 1, 1998 (i.e., the day that is one year after the implementation date of the HST in their province).

Where an annual filer revokes an election during a fiscal year, subsection 363.2(2) deems a reporting period to have ended immediately before. The consequence is that the registrant must file a return for that period within one month after and remit any net tax payable for that period.

New section 363.2 is effective April 1, 1997.

Clause 95

Lease of Real Property Where Exempt Re-supply

ETA
Schedule V, Part I, section 6.1

Existing section 6.1 of Part I of Schedule V exempts certain leases of real property to a person who holds the property for the purpose of re-supplying it in circumstances in which the re-supply is exempt under section 6, 6.1, or 7 of that Part. In particular, section 6.1 refers to the person making, or holding the property for the purpose of making, an exempt supply of the "property". However, paragraph 7(*c*) of that Part exempts not only a supply of the real property itself, but also any supply, by way of assignment, of a lease, license, or similar arrangement in respect of the property.

Amended section 6.1 clarifies that, in addition to a re-supply of the property itself, a supply of a lease, license or similar arrangement in respect of the property can give rise to the exemption provided under that section.

This amendment is consistent with administrative practice and is therefore effective January 1, 1991. However, the section is repealed and replaced in two steps to reflect the different wording of the section between January 1, 1991 and January 1, 1993 and between the latter date and April 1, 1997, owing to previous amendments made to the section.

Clause 96

Sale of a Parking Space

ETA
Schedule V, Part I, section 8

Existing section 8 of Part I of Schedule V exempts the sale of a parking space in a condominium complex if the purchaser, at the same time or as part of the same transaction, also receives an exempt supply by way of sale of a residential condominium unit in the same

complex. Since a "condominium complex" is defined in subsection 123(1) as a residential complex that contains more than one residential condominium unit, existing section 8 does not exempt the sale of a parking space to the purchaser of a detached single unit condominium.

Amended section 8 provides that the exemption also applies to the sale of a parking space situated within the boundaries of a condominium or strata lot plan if, at the same time or as part of the same transaction, the buyer also receives an exempt supply by way of sale of a residential condominium unit described by the same plan. This exemption does not depend upon whether the parking space and the residential condominium unit form part of a "condominium complex" within the meaning of subsection 123(1).

This amendment applies to supplies made after December 10, 1998.

Clause 97

Lease, etc., of Parking Space

ETA
Schedule V, Part I, section 8.1

Existing section 8.1 of Part I of Schedule V exempts the supply of a parking space by way of lease, licence or similar arrangement when made to an occupant, owner or lessee of a residential condominium unit and when the parking space is part of the condominium complex in which the unit is located. Since "condominium complex" is defined in subsection 123(1) as a residential complex that contains more than one residential condominium unit, existing section 8.1 does not exempt the supply of a parking space to the occupant, owner, or lessee of a detached single unit condominium.

Amended section 8.1 exempts a supply by way of lease, licence or similar arrangement of a parking space when made to the occupant, owner, or lessee of a residential condominium unit provided the unit and the parking space are described by the same condominium or strata lot plan. It therefore covers the situation of a single unit condominium.

This amendment applies to supplies made after December 10, 1998. It should be noted that paragraph 136.1(1)(*b*) determines when a supply for a "lease interval" (within the meaning of that subsection) is made. It provides that the supply is made on the earliest of the first day of the lease interval, the day on which the payment attributable to the interval becomes due and the day that the payment is made.

Clause 98

Condominium Fees

ETA
Schedule V, Part I, section 13

Existing section 13 of Part I of Schedule V is intended to exempt condominium fees charged to residential condominium owners or lessees. This is accomplished by exempting the supply by a condominium corporation of property or a service relating to the occupancy or use of a condominium unit in the complex managed by the corporation when the supply is made to the owner or lessee of the unit. Since "condominium complex" is defined in subsection 123(1) as a residential complex that contains more than one residential condominium unit, existing section 13 does not exempt condominium fees charged to the owner or lessee of a detached single unit condominium.

Amended section 13 covers the situation of a single unit condominium. It exempts a supply of property or a service by a corporation (or "syndicate" in the case of transactions governed by the Civil Code) established upon the registration of a condominium or strata lot plan. The supply is exempt when made to the owner or lessee of a residential condominium unit described by that plan. As in the existing section, the property or service supplied must be related to the occupancy or use of the unit.

This amendment applies to supplies for which consideration becomes due after December 10, 1998 or is paid after that day without having become due.

Clause 99

Definition "practitioner"

ETA
Schedule V, Part II, section 1

The definition "practitioner" in section 1 of Part II of Schedule V identifies the types of persons who are not required to charge tax on their supplies of services included in sections 7 and 7.1.

Subclause 99(1)

Osteopaths and Speech Therapists

ETA
Schedule V, Part II, section 1

Amendments contained in chapter 10 of the Statutes of Canada, 1997, had the effect of removing, as of January 1, 1998, osteopathic and speech therapy services from the list of services that are exempt in all provinces from the GST/HST under section 7 of Part II of Schedule V. The amendment under this subclause continues to exempt osteopathic services and extends the speech therapy exemption to the end of the year 2000. If, at that time, speech therapy is regulated as a health profession by the governments of at least five provinces, a further amendment will be introduced to allow these services to remain exempt after that date.

A related amendment is also made under clause 101 to section 7 of Part II of Schedule V, which lists the practitioners' services that are exempt.

Subclause 99(2)

Definition "practitioner"- Psychologists

ETA
Schedule V, Part II, section 1

The definition "practitioner" in section 1 of Part II of Schedule V is amended to remove the requirement for persons practising the profession of psychology to be registered in the Canadian Register of Health Service Providers in Psychology in order for their services to be exempt under that Part.

This amendment applies to supplies made after April 1999.

Clause 100

Institutional Health Care Services

ETA
Schedule V, Part II, section 2

Existing section 2 of Part II of Schedule V exempts the supply of institutional health care services when "made" to a patient or resident of a health care facility. This amendment clarifies that these services are exempt as long as they are "rendered" to a patient or resident. Therefore, it does not matter who the "recipient" of the supply is within the meaning of subsection 123(1).

This amendment applies to supplies made after December 10, 1998.

Clause 101

Practitioners' Services

ETA
Schedule V, Part II, section 7

Part II of Schedule V sets out the health care services that are exempt under the GST\HST.

Subclause 101(1)

Osteopathic Services

ETA
Schedule V, Part II, paragraph 7(*f*)

Pursuant to chapter 10 of the Statutes of Canada, 1997, osteopathic services were scheduled to be removed, as of January 1, 1998, from the list of services that are exempt in all provinces from the GST/HST under section 7 of Part II of Schedule V. One of the policy criteria for the exemption under that section is that the service must be rendered in the practise of a profession that is regulated as a health care profession by the governments of at least five provinces.

This amendment ensures the continued exemption of osteopathic services, reflecting the fact that the profession is currently regulated in at least five provinces. A related amendment is made to the definition "practitioner" in section 1 of this Part (see commentary on clause 99).

This amendment applies to supplies made after 1997.

Subclauses 101(2) and (3)

Speech Therapy Services

ETA
Schedule V, Part II, paragraph 7(*h*)

Pursuant to chapter 10 of the Statutes of Canada, 1997, speech therapy services were scheduled to be removed, as of January 1, 1998, from the list of services that are exempt in all provinces from the GST/HST under section 7 of Part II of Schedule V. One of the policy criteria for exemption under that section is that the service must be rendered in the practise of a profession that is regulated as a health care profession by the governments of at least five provinces.

The amendments under subclauses 101(2) and (3) extend the exemption for speech therapy services to the end of the year 2000 to allow time for the completion of a process currently underway to regulate the profession in a fifth province. A related amendment is

made to the definition "practitioner" in section 1 of this Part (see commentary on clause 99).

Clause 102

Second-language Courses

ETA
Schedule V, Part III, section 11

Existing section 11 of Part III of Schedule V provides for an exemption for second-language training in English or French when provided by a school, public college or university, or organization established and operated primarily to provide language instruction. This section is amended to extend the exemption to include English and French second-language courses offered by vocational schools (within the meaning of section 1 of that Part).

In addition, the reference in existing section 11 to "organization" is removed to clarify that the exemption is available whenever the supplier is a person whose business is primarily to provide instruction in languages. For example, the section applies to a supply by a sole proprietor who operates a business established primarily to provide language training.

These amendments apply to supplies made after April 1999.

Clause 103

Respite Care Services

ETA
Schedule V, Part IV, section 3

New section 3 of Part IV of Schedule V provides for an exemption for the care and supervision of individuals who have limited capacity for self-supervision and self-care due to an infirmity or disability. The exemption applies where the service is rendered principally at an establishment of the supplier. For example, this would include daytime or overnight care of an individual with an infirmity or

disability provided at the supplier's establishment while the individual's primary caregiver is unable to provide the care and supervision.

New section 3 applies to services provided after February 24, 1998. Subclause 103(3) provides that, if a contract for services straddles that date, the provision of the services before that date and the provision of the services on or after that date are treated as separate supplies. The consideration for each of the separate supplies is deemed to be the portion of the total consideration for the services that is attributable to each of those periods. The result is that the amendment does not retroactively affect the status of services supplied before that date as either taxable or exempt supplies. Consequently, the amendment does not give rise to any entitlement to a refund of tax paid in respect of those services nor does it retroactively affect the input tax credit entitlement of the supplier in relation to the provision of those services.

A change in the tax status of a supplier's services could result in a substantial enough change in the extent to which the supplier's capital property is used in making taxable supplies that it triggers the application of change-in-use rules under subdivision d of Division II of Part IX of the Act. Under those rules, if there is such a change in use that results in a decrease in the extent to which the capital property is used in making taxable supplies, an amount is required to be added to the supplier's net tax. On the other hand, if the change in use increases the extent to which capital property is used in making taxable supplies, the effect of the change-in-use rules is that the supplier can claim additional input tax credits. In either case, the amount of tax to be added to net tax or that is eligible for input tax credits is calculated based on the "basic tax content" of the property at the time of the change in use (as defined in subsection 123(1)).

Subclause 103(4) ensures that any change of use of capital property of the supplier that results from the exemption under new section 3 for respite care services does not result in an addition to the net tax of the supplier. The rule under paragraph (*d*) of that subclause nevertheless ensures that any tax that would otherwise be required to be added to the net tax of the supplier is considered to have become payable and to have been rebated for purposes of establishing the "basic tax content" of the supplier's capital property at that time. This ensures that a proper result is obtained with respect to the

calculation of any amount to be added to net tax or to be credited on any future change in the use of the capital property.

Clause 104

Specified Services Provided by Charities

ETA
Schedule V, Part V.1, section 1

New paragraph *d*.1 of section 1 of Part V.1 of Schedule V adds supplies of "specified services" (as defined in new subsection 178.7(1) of the Act) to the list of supplies that do not fall under the general exemption for most services supplied by charities. The specified services are excluded from this exemption when supplied to a registrant at a time when a designation of the charity under new section 178.7 is in effect (see commentary on clause 23).

Specified services are any services provided by the charity, with the exception of the provision of care and employment-related assistance for individuals with disabilities supplied to a public sector body or a board, commission or other body established by a government or a municipality. The latter services remain within the exemption under section 1 despite the designation of the charity. Further, the designation of the charity for purposes of section 1 does not affect the exemption of any of its services under other provisions such as the specific exemptions for health care services or educational services.

The exclusion of specified services from the general exemption under section 1 permits a charity to compete on an equal footing with other registered suppliers when supplying services that would, but for that section, be taxable. By treating its services to registered business customers as taxable, the charity is in a position to claim input tax credits in respect of inputs related to those services. Its registered business customers can, in turn, claim input tax credits for the tax paid on the charity's services to the extent that the services are acquired for use in the course of commercial activities of those customers.

A related amendment is made under subclause 43(5) to exclude designated charities from the application of section 225.1 of the Act, which provides a special streamlined method by which most charities determine their net tax. Under that method, a charity is generally not able to claim input tax credits for inputs other than capital and real property. This method is not appropriate for charities designated under section 178.7. Another amendment under clause 46 to subsection 227(1) permits such designated charities to instead elect to use a streamlined accounting method (referred to as the "Special Quick Method") that is prescribed under that subsection for use by public service bodies.

These amendments apply to supplies made in reporting periods beginning after February 24, 1998.

Clause 105

Direct Cost Exemption for Charities

ETA
Schedule V, Part V.1, section 5.1

Section 5.1 of Part V.1 of Schedule V describes a supply made by a charity that is exempt based on the amount charged for the supply in relation to its "direct cost". The "direct cost" of a supply is defined in subsection 123(1) of the Act.

In general, the direct cost of a supply includes non-recoverable provincial taxes, duties or fees prescribed under section 154. Section 5.1 is amended to ensure that, in the case where the charity has treated the supply as taxable and charged tax, it is the amount of direct cost minus both the Québec Sales Tax (QST), if any, and the GST/HST that is to be compared with the tax-excluded selling price in determining if that price equals or exceeds the exemption threshold. For example, if a charity charged tax on a sale of an item of inventory but charged a pre-tax price below the QST and GST/HST-excluded direct cost of acquiring the inventory, the supply nevertheless would be exempt.

A parallel amendment is made under clause 106 to the direct cost exemption for public service bodies (within the meaning of subsection 123(1)) other than charities.

This amendment applies to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due.

Clause 106

Direct Cost Exemption for Public Service Bodies other than Charities

ETA
Schedule V, Part VI, section 6

Section 6 of Part VI of Schedule V describes a supply made by a public service body defined in subsection 123(1) (other than a charity). The supply included in section 6 is an exempt supply based on the amount charged for the supply in relation to its "direct cost". The "direct cost" of a supply is also defined in subsection 123(1).

In general, the direct cost of a supply includes non-recoverable provincial taxes, duties or fees prescribed under section 154. Section 6 is amended to ensure that, in the case where the body has treated the supply as taxable and charged tax, it is the amount of direct cost minus both the Québec Sales Tax (QST), if any, and the GST/HST that is compared with the tax-excluded selling price to determine if that price equals or exceeds the exemption threshold. For example, if a university charged tax on a sale of an item of inventory but charged a pre-tax price below the QST and GST/HST-excluded direct cost of acquiring the inventory, the supply nevertheless would be exempt.

This amendment applies to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due.

Clause 107

Prescription Drugs

ETA
Schedule VI, Part I, paragraphs 2(*c*) and (*d*)

Section 2 of Part I of Schedule VI lists zero-rated supplies of a broad range of drugs that are regulated under federal legislation. This section is amended to update cross-references as a result of changes to the *Food and Drugs Act* and the *Narcotic Control Act* and regulations made under those Acts.

Specifically, drugs formerly listed in schedule G to the *Food and Drugs Act* are now found in the schedule to Part G of the *Food and Drug Regulations*. In addition, substances previously listed in the schedule to the *Narcotic Control Act* are now set out in the schedule to the *Narcotic Control Regulations*.

In addition, amended paragraph 2(*d*) cross-references the *Controlled Drugs and Substances Act* instead of the *Narcotic Control Act* to reflect current federal drug regulation legislation.

These amendments are effective May 14, 1997, when the corresponding changes to the cross-referenced legislation came into effect.

A related amendment is made under clause 138 that is conditional on the assent of Bill C-80, introduced in the first session of the thirty-sixth Parliament and entitled the *Canada Food Safety and Inspection Act*. That Bill renames the *Food and Drugs Act* and therefore contains a consequential amendment to paragraph 2(*c*) of Part I of Schedule VI to the *Excise Tax Act* to replace the existing cross-reference to the *Food and Drugs Act* in paragraph 2(*c*).

However, the amendment under this clause also replaces the reference to the *Food and Drugs Act*, in this case with a reference to the *Food and Drug Regulations,* which are not renamed by Bill C-80. Therefore, in the event that this clause comes into force before paragraph 186(*d*) of Bill C-80, the reference in the latter paragraph to paragraph 2(*c*) is not necessary and is, under clause 138, deleted as of the day that Bill C-80 receives Royal Assent.

On the other hand, in the event that this clause and paragraph 186(*d*) of Bill C-80 come into force on the same day, clause 138 re-enacts, as of May 14, 1997, the version of the said paragraph 2(*c*) that refers to the *Food and Drug Regulations*.

Clause 108

Services in respect of Medical Devices

ETA
Schedule VI, Part II, section 34

Section 34 of Part II of Schedule VI describes zero-rated supplies of certain services related to medical devices listed in other cross-referenced sections of that Part, including the section that includes prescribed medical devices. As a result of amendments made to that Part (by c.10, S.C., 1997), the reference to incontinence products, which had been included in the *Medical Devices (GST) Regulations*, was added under section 37 of the Schedule instead. By an oversight, section 34 was not consequentially amended to cross-reference section 37.

Therefore, section 34 is amended to cross-reference section 37 and thereby ensure that it continues to encompass services in respect of incontinence products.

This amendment applies to supplies made after April 23, 1996, which corresponds to the application of the amendment adding incontinence products under section 37.

Clause 109

Exports of Continuous Transmission Commodities by Non-registrants

ETA
Schedule VI, Part V, section 1

The supply of most types of goods made to a recipient (other than a consumer) who intends to export the goods is zero-rated under section 1 of Part V of Schedule VI where the conditions set out in

that section are met. Section 1 is amended such that, together with amended section 15 and new sections 15.1 and 15.2, special provision is made for exports of continuous transmission commodities by registrants (see also the commentary on clauses 113 and 114).

Continuous transmission commodities are newly defined by subsection 123(1) to include oil, natural gas and electricity transported by pipeline or power-line. The new basis for zero-rating these commodities recognizes their fungible nature and the special circumstances in which they are sold as exports.

Existing paragraphs 1(*a*) to (*d*) are renumbered as paragraphs (*b*) to (*e*) respectively and new paragraph 1(*a*) is added. Pursuant to that new paragraph, continuous transmission commodities to be exported by pipeline or power-line by a registrant no longer qualify for zero-rating under section 1. Instead, such supplies may be zero-rated under new section 15.2 with the use by the registrant of an export declaration referred to in that new section.

Supplies of continuous transmission commodities to unregistered recipients may still be zero-rated under section 1 if the existing conditions under that section are met. One of those conditions is that the property must not have been acquired for supply in Canada before it is exported. However, reference should also be made to new section 15.1, which provides for zero-rating under certain conditions where the commodity is in fact supplied in Canada in exchange for like product situated outside Canada.

Another existing condition under section 1 is that the property must not have been acquired for consumption or use in Canada or for further processing before being exported. However, in the case of supplies of natural gas, reference should also be made to amended section 15, which specifically provides for the zero-rating of natural gas even if it has been partially consumed as fuel or compressor gas or is further processed at a straddle plant before it is exported.

The amendments to section 1 apply to property supplied after October 1998.

Clause 110

Air Navigation Services

ETA
Schedule VI, Part V, section 2.2

Air navigation services are among the services currently zero-rated when supplied to air carriers who are not registered for purposes of the GST/HST.

New section 2.2 of Part V of Schedule VI has the effect of also zero-rating air navigation services supplied to registered air carriers when the services are in relation to international flights. For this purpose, the term "air navigation service" has the meaning assigned by subsection 2(1) of the *Civil Air Navigation Services Commercialization Act*.

New section 2.2 applies to services performed after March 1997.

Clause 111

Exports by Common Carrier

ETA
Schedule VI, Part V, section 12

Existing section 12 of Part V of Schedule VI has the effect of zero-rating a supply of tangible personal property where the supplier delivers the property to a common carrier, or mails the property, for export.

The first amendment to section 12 excludes from its application supplies of continuous transmission commodities (e.g., oil, natural gas or electricity) transported by pipeline or power-line. This is because special provision is made for the zero-rating of these commodities under amended section 15 and new sections 15.1 and 15.2 of this Part (see commentary on clauses 113 and 114). This change applies to supplies made after August 7, 1998.

Section 12 is further amended, with respect to supplies made after April 1999, to provide that, in order to qualify for the zero-rating under that section, one of two circumstances must be met. One is that the supplier ships the property, or sends it by mail or courier, to a destination outside Canada. The alternative circumstance is that the supplier transfers the property to a common carrier that has been retained, by either the supplier on behalf of the recipient or by the recipient's employer, to ship the property out of the country.

Clause 112

Supplies to Non-resident Warrantors

ETA
Schedule VI, Part V, section 13

Under existing paragraph 13(*a*) of Part V of Schedule VI, a supply to a non-resident warrantor of warranty services is zero-rated if the warranty is in respect of tangible personal property. The amendment to this paragraph adds a reference to a warranty in respect of real property. For example, the amendment clarifies, for greater certainty, that the warranty service is also zero-rated where the warranty is in respect of property that has, since being acquired, become real property by having been installed into real property (e.g., a furnace).

This amendment applies to supplies of services made after December 10, 1998.

Clause 113

Natural Gas Exports

ETA
Schedule VI, Part V, section 15

Existing section 15 of Part V of Schedule VI has the effect of zero-rating a supply of natural gas made to a recipient who intends to export the natural gas by pipeline where the conditions set out in paragraphs 15(*a*) to (*d*) are met.

Natural gas acquired in Canada for export is often stored prior to its exportation. Also, natural gas is often acquired for export upstream of natural gas straddle plants. Under the existing rules, if, prior to being exported, natural gas is stored or processed beyond the extent reasonably necessary to transport the gas, the supply of the gas prior to the storage or processing cannot be zero-rated under section 15.

Paragraph 15(*a*) is amended to ensure that a supply of natural gas can be zero-rated even where the recipient receives a supply of a service of storage, included in new section 15.3 of Part V of the Schedule, prior to the exportation of the gas. Paragraph 15(*b*) is amended to ensure that a supply only of natural gas liquids or ethane recovered from the gas at a straddle plant, as described in new subsection 153(6) of the Act, does not preclude the supply of the gas from being zero-rated under section 15. Finally paragraph 15(*c*) is amended to ensure that the processing of the gas to recover natural gas liquids or ethane at a straddle plant does not preclude its zero-rating under this section.

A related amendment is made to the definition "continuous outbound freight movement" in subsection 1(1) of Part VII of Schedule VI. It ensures that the recovery of natural gas liquids or ethane from gas at a straddle plant does not affect the tax status of the service of shipping the gas to and from the plant en route to its destination outside Canada (see commentary on clause 115).

The amendments to paragraphs 15(*a*) to (*c*) apply to supplies of natural gas for which any consideration becomes due after August 7, 1998 or is paid after that day without having become due.

Section 15 is further amended, with respect to supplies made after October 1998, to provide that it applies only to a supply of natural gas made to a recipient who is not registered for GST/HST purposes. Supplies made to registered recipients are dealt with in new section 15.2 of Part V of the Schedule (see commentary on clause 114).

Clause 114

Continuous Transmission Commodities

ETA
Schedule VI, Part V, sections 15.1 to 15.4

New sections 15.1 to 15.4 of Part V of Schedule VI provide for the zero-rating of supplies of continuous transmission commodities and of services to non-resident non-registrants in respect of such commodities. Continuous transmission commodities are newly defined by subsection 123(1) to include oil, natural gas and electricity transported by pipeline or power-line. The new zero-rating provisions recognize the fungible nature of these commodities and the special circumstances in which they are sold for export.

Section 15.1 Exchanges

Continuous transmission commodities situated in Canada are frequently exchanged for similar commodities situated outside Canada. For example, natural gas acquired in Canada on a zero-rated basis by an unregistered non-resident person who intends to export the gas may instead be sold, without having been exported, to a person in Canada in exchange for the resident's gas already situated outside Canada. Persons may enter into exchange agreements to minimize transportation costs and reduce shipping time.

In these circumstances, under the existing rules, the commodity initially acquired in Canada for export by the unregistered person is not regarded as having been exported since it physically remains in Canada. Consequently, the transaction previously made on a zero-rated basis "unwinds" and unrecoverable tax becomes payable in respect of the acquisition of the commodity by the unregistered person.

New section 15.1 ensures that specified cross-border exchanges of continuous transmission commodities transported by means of a wire, pipeline or other conduit are taxed on a transaction basis rather than on the basis of physical flows. Specifically, the section zero-rates certain supplies in Canada of a continuous transmission commodity by a person (referred to as the "first seller") to a recipient (referred to as the "first buyer"). The supply is zero-rated if the commodity is

exchanged by the first buyer, under an agreement with a registrant, for product of a similar class or kind situated outside Canada. In addition, new paragraph 15.1(*b*) has the effect of zero-rating any service provided to the first buyer by the registrant of arranging for or effecting the exchange, where the first buyer is a non-resident person.

New section 15.1 applies to supplies of continuous transmission commodities delivered in Canada, and to supplies of services, for which any consideration becomes due after August 7, 1998 or is paid after that day without becoming due. With respect to supplies made on or before October 31, 1998, the section applies to any first buyer. For supplies made after that day, the section applies only if the first buyer is not registered for GST/HST purposes. Supplies made to registered purchasers after October 1998 are instead dealt with under new section 15.2 of this Part.

In order for the supply of a continuous transmission commodity by the first seller to the first buyer to be zero-rated under section 15.1, certain other conditions must be met. The commodity must not be transported other than by means of a pipeline, power-line or other conduit between the time of its supply to the first buyer and the time delivery is made by the first buyer to the registrant under the exchange agreement. The commodity must not be used (except in the case of natural gas as fuel or compressor gas to transport the gas by pipeline), or further processed or altered after it is delivered to the first buyer and before it is delivered to the registrant. An exception is made for processing or alteration reasonably necessary to the transportation of the commodity or, in the case of natural gas, to recover natural gas liquids or ethane from the gas at a straddle plant. Finally, the first seller must maintain evidence satisfactory to the Minister of National Revenue of the subsequent exchange of the commodity by the first buyer.

Related amendments are made to sections 217 and 218.1 (see subclauses 35(2) and 36(1) and (2)). Those amendments ensure that the supply of the commodity acquired in Canada by a registrant as a result of such an exchange with a first buyer who is a non-resident is treated as an imported taxable supply if the registrant is not acquiring the commodity for consumption, use or supply exclusively in the course of the registrant's commercial activities. If the supply is an

imported taxable supply, the registrant is required to self-assess and remit the GST/HST in respect of the supply under Division IV.

Section 15.2 Supplies to Registered Persons

Under existing sections 1 and 15 of Part V of Schedule VI, in order to zero-rate a supply of goods made in Canada, the supplier must maintain satisfactory proof of the export of the goods by the recipient of the supply. The intent of new section 15.2 is to simplify compliance for suppliers in these circumstances in relation to exports of continuous transmission commodities that are transported by means of a wire, pipeline or other conduit.

New section 15.2 zero-rates a supply of a continuous transmission commodity to a registered recipient who provides a written declaration of the recipient's intent to export the commodity in circumstances described in the relevant provision of this Part or to exchange it as described in new section 15.1 of this Part. The zero-rated status of the supply is maintained even if the commodity is subsequently neither so exported nor so exchanged provided that the supplier did not know, and could not reasonably be expected to have known, at or before the latest time at which tax would have became payable in respect of the supply, that the recipient would neither export nor supply the commodity under an exchange agreement. However, in the case where the declared intent is not fulfilled, the supply to the recipient is defined to be an imported taxable supply (by virtue of new paragraphs 217(*b*.3) and 218.1(*c*)). Consequently, the recipient is required, under Division IV, to self-assess and remit tax on the consideration for the supply, unless the commodity is acquired for consumption, use or supply exclusively in the course of the recipient's commercial activities.

Under Division IV, the tax is considered to have become payable when the consideration for the supply became due and is required to be remitted on or before the due date of the return for the registrant's reporting period in which the tax became payable. Penalty and interest under section 280 accrue from that day on any amount of such tax that is not remitted on or before that day.

In addition, new section 236.1 adds an amount to the registrant's net tax for the reporting period of the registrant in which tax on the initial supply would have become payable had that supply not been a

zero-rated supply (i.e., generally the reporting period in which consideration for that supply became due). This net tax adjustment reflects the cash-flow benefit obtained by the registrant in having received the supply on a zero-rated basis. The amount so added to net tax also attracts penalty and interest under section 280.

New section 15.2 applies to supplies made after October 1998.

Section 15.3 Natural Gas Storage Services

Natural gas acquired in Canada may be stored prior to export for a number of reasons, including transportation constraints and security of supply. If the purchaser of the storage services is not registered, any GST/HST paid on the supply of storage will not be recoverable.

New section 15.3 zero-rates a service of storing natural gas for a period and returning equivalent gas at the end of the period where the recipient of the supply is a non-resident person who is not registered for GST/HST purposes. The circumstances covered by new section 15.3 include where surplus natural gas of a non-resident unregistered person is taken up for a period and natural gas is returned to the non-resident at the end of the period.

Where title to the natural gas transfers to a registrant to facilitate storage of the gas or to facilitate taking up the surplus gas until such time as the non-resident can take back the gas, it is a question of fact as to whether the consideration payable to the registrant by the non-resident is in respect of a service or of a supply of gas. Generally, the supply is zero-rated as a supply of a service included in section 15.3 where the consideration attributable to the transfer of title to the gas is nil or nominal.

Also, in order for this provision to apply, it is not necessary that the gas be physically maintained in storage. The critical factor is that the service provider returns to the non-resident at the end of the period natural gas that is equivalent to that which was owned by the non-resident at the beginning of the period. Due to the fungible nature of the commodity, it is not necessarily the same molecules of gas that are returned to the non-resident at the end of the period. The natural gas that is returned must be in the same measure (usually marked in terms of energy content) and state (i.e., extent of processing). However, the consumption or use of some of the gas as

fuel or compressor gas for its transportation purposes, or processing of the gas at a straddle plant to recover natural gas liquids or ethane from the gas, does not disqualify the supply of the service from being zero-rated.

In order for a supply of a service to be zero-rated under section 15.3, certain other conditions must be met. At the end of the period, the gas must be returned to the recipient for export and at that time the recipient must hold a valid licence or order for the export of natural gas issued under the *National Energy Board Act*. The supplier must not have known and could not reasonably have been expected to have known, at or before the latest time at which tax in respect of the supply of the service would have become payable if the supply were not a zero-rated supply, that the recipient would not export the gas within a reasonable period of time or that the gas would be used, consumed or further processed beyond what is contemplated by the zero-rating conditions.

New section 15.3 applies to supplies of services for which any consideration becomes due after August 7, 1998 or is paid after that day without having become due.

Section 15.4 Surplus Electricity

New section 15.4 of Part V of Schedule VI zero-rates a supply of a service to a non-resident unregistered person of taking up surplus electricity of the non-resident for a period or of deferring delivery of electricity sold to the non-resident at the beginning of a period until the end of the period. In the electricity industry, these transactions are equivalent to storage services since it is not possible to physically store electricity. As such, section 15.4 provides parallel treatment to that afforded natural gas under new section 15.3 of this Part.

Similar to section 15.3, the conditions for zero-rating under section 15.4 include the requirement that the electricity that is delivered at the end of the period be in the same measure and state as that which was taken up or supplied at the beginning of the period. In addition, at the end of the period, the requirement under the *National Energy Board Act* with respect to the holding of a valid licence, order or permit for the export of the electricity must be met.

New section 15.4 applies to supplies of services for which any consideration becomes due after August 7, 1998 or is paid after that day without having become due.

Clause 115

Definition "continuous outbound freight movement"

ETA
Schedule VI, Part VII, subsection 1(1)

Natural gas is often acquired for export upstream of natural gas straddle plants. The term "straddle plant" is newly defined in subsection 123(1) (see subclause 9(6)) and refers to plants devoted primarily to the recovery of natural gas liquids or ethane from natural gas. Under the existing rules, if, prior to being exported, natural gas is processed beyond the extent reasonably necessary to transport the gas, the supply of the service of shipping the gas cannot be zero-rated.

The definition "continuous outbound freight movement" in subsection 1(1) of Part VII of Schedule VI is amended to ensure that zero-rating is permitted for continuous outbound freight transportation services in respect of natural gas being transported by pipeline, even where the gas is processed at a straddle plant to recover natural gas liquids or ethane from the gas before being exported. A related amendment is made to section 15 of Part V of Schedule VI to ensure that the supply of the gas itself does not lose its zero-rated status due to such processing at a straddle plant.

The amendment to the definition is effective August 7, 1998 and applies in relation to supplies of transportation services for which any consideration becomes due after that day or is paid after that day without having become due.

Clause 116

Imported Goods Supplied under Warranty

ETA
Schedule VII, section 5

Existing section 5 of Schedule VII describes goods that may be imported free of GST/HST. The existing section covers warranty replacement parts for other goods where the parts are imported by a person who has obtained them from a non-resident person for no consideration other than shipping and handling charges.

The amendment expands the scope of section 5 in two ways. First, it has the effect of covering not only repair parts but also replacement property supplied under warranty and imported in the same circumstances. This includes both the situation where the non-resident substitutes replacement goods on a permanent basis and the situation where the replacement property is provided on a temporary basis (e.g., where the non-resident lends substitute property for use while the goods covered by the warranty are under repair or a permanent replacement is sought).

Secondly, the amendment to section 5 removes the restriction that the warranty must be in respect of tangible personal property. Therefore, the warranty could relate to property that has already been incorporated into real property.

Similar changes are made to the parallel provision under section 14 of Part I of Schedule X dealing with goods brought into an HST participating province (see clause 119).

This amendment applies to goods imported after December 10, 1998.

Clause 117

Deemed Delivery in a Province

ETA
Schedule IX, Part II, paragraph 3(*a*) of French Version

The amendment to the French version of paragraph 3(*a*) of Part II of Schedule IX replaces the term "voiturier" with the more common term "tranporteur". This amendment is effective December 10, 1998.

Clause 118

Place of Supply for Lease Interval under Short-term Lease, etc.

ETA
Schedule IX, Part II, section 4

Schedule IX sets out rules for determining whether a supply is made in a particular province for purposes of the HST. Under those rules, in the case of short-term leases, licences, etc. of property (i.e., three months or less), the province in which the supply of the property is made is intended to be determined once based on the province in which the property is first delivered or made available to the recipient, similar to the rule for sales of goods. This rule differs from that for longer-term arrangements. In the latter case, the province in which the supply is considered to be made could be different for each lease interval (as defined in subsection 136.1(1) of the Act) based on where the property is located during that interval. Therefore, in that case, the periodic payment could be subject to the 15% HST in some periods and subject to the 7% GST in other periods, if the property is re-located from one period to the next.

New section 4 is added to clarify that the province in which the supply of tangible personal property is made in the case of a lease, licence or similar arrangement of three months or less is determined once based on the initial delivery of the property and will not change throughout the different lease intervals, if any, under the arrangement. Therefore, for example, if a piece of equipment is delivered in a non-participating province to a recipient under a three-month lease requiring monthly lease payments (i.e., having three lease intervals)

and the recipient brings the property into a participating province at the beginning of the third month, the payment for that month will not be subject to the 15% HST but will remain subject to the 7% GST.

However, it should be noted that, just as leased goods may be subject to tax when imported from outside Canada, upon bringing goods from a non-participating province into a participating province, the goods are subject to the 8% provincial component of the HST generally on their fair market value, subject to any special provision for goods temporarily brought in. In that circumstance, the effect of new section 4 is to ensure that the periodic payments would not also be subject to the 8% component under Division II of Part IX of the Act.

New section 4 parallels a similar amendment made to subsection 136.1(1) dealing with the determination of whether a supply of property for a lease interval is deemed to be made in or outside Canada (see commentary on subclause 11(2)).

New section 4 applies in determining the place of supply for supplies made after December 10, 1998. It should be noted that paragraph 136.1(1)(*b*) determines when a supply for a lease interval is made. It provides that the supply is made on the earliest of the first day of the lease interval, the day on which the payment attributable to the interval becomes due and the day that the payment is made.

Clause 119

Goods Supplied Under Warranty and
Brought into a Participating Province

ETA
Schedule X, Part I, section 14

Section 14 of Part I of Schedule X describes goods that may be brought into an HST participating province free of the 8% component of the HST. The existing section covers warranty replacement parts for other goods where the parts are brought into the province by a person who has obtained them for no consideration other than shipping and handling charges.

The amendment expands the scope of section 14 in two ways. First, it has the effect of covering not only repair parts but also replacement property supplied under warranty and brought into a participating province in the same circumstances. Secondly, it removes the restriction that the warranty must be in respect of tangible personal property. Therefore, the warranty could relate to property that has already been incorporated into real property. Similar changes are made to the parallel provision under section 5 of Schedule VII dealing with goods imported into Canada.

This amendment applies to property brought into a participating province after December 10, 1998.

Clause 120

References to Tobacco Tax

ETA
Parts III and VII of the Act and section 1 of Schedule II

Clause 120 amends those provisions of the Act and of Schedule II that refer to the Nova Scotia *Tobacco Tax Act*. That statute was repealed and replaced by the Nova Scotia *Revenue Act* on April 1, 1996. These amendments to the *Excise Tax Act* update the references to the Nova Scotia legislation effective April 1, 1996.

Clause 121

Coming-into-force Provision for Section 225.2

S.C., 1997, c. 10, subsection 208(2)

Subsection 208(2) of chapter 10 of the Statutes of Canada, 1997, sets out the application rule for section 225.2 of the *Excise Tax Act* and provides that, for reporting periods beginning before April 1, 1997 and ending on or after that day, subsection 225.2(2) must be read as set out in that application rule. Under subclauses 42(1) and (2), paragraph (*b*) of the description of elements A and B of the formula in subsection 225.2(2) is amended to delete a superfluous reference (see commentary on those subclauses). Consequently, the formula in

the subsection as it is set out in subsection 208(2) of the said chapter 10 is similarly amended.

Clause 122

Transitional provision – Small Supplier Divisions

S.C., 1997, c. 10, paragraph 257(*c*)

Section 257 of chapter 10 of the Statutes of Canada, 1997, contains transition rules for divisions of public services bodies that can be designated as "small supplier divisions" as a result of the increase of the small supplier thresholds implemented by that section. The French version of existing paragraph 257(*c*) incorrectly refers to *"alinéa 129(7)e)"*. The French version of that paragraph is therefore amended to refer instead to *"alinéa 129(7)b)"*, which corresponds to paragraph 129(7)(*e*) of the English version of the *Excise Tax Act.*

This amendment is deemed to have come into force on March 20, 1997, the date of enactment of the said chapter 10.

Clause 123

How Application Made to Tax Court

Cultural Property Export and Import Act
33.2(3)

Section 33.2 of the *Cultural Property Export and Import Act* allows a person to apply to the Tax Court of Canada for an extension of time to bring an appeal to the Tax Court if the person has not done so within the time limits set out in section 33.1. Subsection 33.2(3) details how the application to the Tax Court is to be made.

To avoid inconsistencies between that provision and the *Tax Court of Canada Act*, subsection 33.2(3) is amended to provide that the application is to be filed in the Registry of the Tax Court in accordance with the provisions of that Act. Similar amendments are made under clauses 79 and 80 to subsections 304(2) and 305(3) of the *Excise Tax Act*, as well as under clauses 129 and 130, which

amend the parallel provisions of the *Income Tax Act* (i.e., subsections 166.2(2) and 167(3) of that Act).

These amendments come into force on Royal Assent.

Clause 124

Production of Documents

Customs Act
43

Subsection 43(1) of the *Customs Act* provides that the Minister of National Revenue may by notice require any person to provide any document relating to the administration or enforcement of that Act. Such documents include books, letters, accounts, invoices and statements (financial or otherwise). For greater certainty, the list of documents mentioned in this subsection is expanded to include "records". As well, the amendment permits the notice of the Minister to be sent by certified mail. A consequential amendment is also made to subsection 43(2) to add a reference to "records" and "information" for consistency with subsection (1).

Subsection 43(1) is further amended to clarify that the administrative and enforcement purposes for which it applies include the collection of any amount owing by any person under the *Customs Act*. This parallels similar clarifications made to subsections 289(1) and 292(1) of the *Excise Tax Act* as well as to subsections 231.2(1) and 231.6(1) of the *Income Tax Act*.

These amendments come into force on Royal Assent.

Clause 125

Court Costs

Customs Act
143(1.1)

New subsection 143(1.1) is added to the *Customs Act* to provide that where court costs are awarded to the Crown during the litigation of a matter to which that Act applies, the collections provisions under sections 145 and 147 of that Act apply to the collection of those costs as if they were a debt owing to Her Majesty on account of duties payable under that Act.

Section 145 applies only to debts in respect of which there is a "default" of payment. Existing section 143 establishes when a person is considered to be in default. Therefore, new subsection 143(1.1) provides that the person from whom the court costs are owing is in default unless the costs are paid on or before the day that they are due.

New subsection 143(1.1) parallels new subsection 313(4) of the *Excise Tax Act* (added by clause 81) and existing section 222.1 of the *Income Tax Act*. The amendment applies to amounts that are payable after Royal Assent, regardless of when the amounts became payable.

Clause 126

Destruction of Beer Unfit for Consumption

Excise Act
174(2) of French Version

Subsection 174(2) of the *Excise Act* establishes statutory conditions for the destruction of beer that has become unfit for use. This amendment, which comes into force on Royal Assent, brings the French version of the Act into conformity with the English version.

The word "*prescrire*" contained in the existing French version of subsection 174(2) is replaced with the word "*prévoir*". This is more

consistent with the policy objective to allow rather than to require the destruction of beer.

Clause 127

Specially Denatured Alcohol

Excise Act
246(2) and (2.1)

Subsection 246(2) of the *Excise Act* establishes statutory conditions for the importation, manufacture and sale of specially denatured alcohol (such as rubbing alcohol). It provides that the importation, manufacture and sale of specially denatured alcohol is subject to conditions prescribed by regulations made by the Minister of National Revenue. It further provides that specially denatured alcohol may only be sold to manufacturers or dealers under a departmental permit and only for a use for which denatured alcohol would be unsuitable.

The existing wording of the subsection is unclear as to the extent to which the statutory conditions may limit the Minister's authority to make regulations. The amendment clarifies this matter by setting out in a separate subsection the more general condition that all specially denatured alcohol be imported, manufactured or sold in accordance with regulations, and by providing under new subsection (2.1) the additional conditions pertaining only to sales or deliveries to manufacturers or dealers. This amendment comes into force on Royal Assent.

Reference should also be made to an amendment to section 246 under clause 139, which is conditional on the coming into force of another amendment to subsection 246(2) contained in subsection 143(1) of the *Canada Customs and Revenue Agency Act*. The amendment in that Act replaces the reference to "departmental permit" with a reference to "ministerial permit".

Clause 128

Fair Market Value of Undivided Interest

Income Tax Act
160(1.2)

Section 160 of the *Income Tax Act* provides rules under which a transferee of property may be liable for unpaid taxes of the transferor when the two parties are not dealing at arm's length. In general, this liability is limited to the amount by which the fair market value of the property (at the time it is transferred) exceeds the consideration, if any, given for the property. New subsection 160(1.2) provides a rule for determining the fair market value of a proportionate undivided interest in property for the purposes of applying section 160.

Under new subsection 160(1.2), the fair market value of each proportionate undivided interest in a property is deemed to be equal to that same proportion of the fair market value of the whole of the property. For example, if a husband and wife each have a 50% undivided interest in real property, the fair market value of each of their interests is deemed to be equal to 50% of the fair market value of the real property. This rule is subject to the special rule in subsection 160(4) that deems the value of the interest to be nil when it is transferred pursuant to a decree, order or judgment of a tribunal on a marriage breakdown.

Clause 86 adds a parallel provision to the *Excise Tax Act* as new subsection 325(1.1).

This amendment applies to transfers of property made after Announcement Date.

Clauses 129 and 130

How Application Made to Tax Court

Income Tax Act
166.2(2) and 167(3)

Section 166.2 of the *Income Tax Act* allows a person to apply to the Tax Court of Canada for an extension of time to file an objection or a request, if the person has previously applied to the Minister for an extension and that application was refused or not responded to within 90 days. Subsection 166.2(2) details how the application to the Tax Court is to be made.

Similarly, section 167 of the *Income Tax Act* allows a person to apply to the Tax Court for an extension of time to bring an appeal to the Tax Court, if the person has not done so within the time limits set out in section 169. Subsection 167(3) details how this application to the Tax Court is to be made.

To avoid inconsistencies between these provisions and the *Tax Court of Canada Act*, subsections 166.2(2) and 167(3) are amended to provide that the application in question is to be filed in the Registry of the Tax Court in accordance with the provisions of that Act. Similar amendments are made under clauses 79 and 80 to subsections 304(2) and 305(3) of the *Excise Tax* Act.

These amendments come into force on Royal Assent.

Clause 131

Secured Claims

Income Tax Act
223(11.1)(*a*) of the English Version

The amendment to the English version of paragraph 223(11.1)(*a*) of the *Income Tax Act* corrects an editorial error in that provision by replacing the term "security claim" with the correct term "secured claim".

This amendment applies on Royal Assent.

Clauses 132 and 133

Information Demands and Definition of
"foreign-based information or document"

Income Tax Act
231.2(1) and 231.6(1)

Subsection 231.2(1) of the *Income Tax Act* provides that, notwithstanding any other provision of that Act, the Minister of National Revenue may by notice require that any person provide information or any document relating to the administration or enforcement of the Act. An exception is made where the information or document relates to an unnamed person or persons, in which case the procedure set out in subsections 231.2(2) to (6) must be followed.

Similarly, under section 231.6, the Minister may, by notice and subject to judicial review, require any person resident in Canada or a non-resident person who carries on business in Canada to provide any "foreign-based information or document". The term "foreign-based information or document" is defined in subsection 231.6(1) as any information or document available outside Canada that may be relevant to the administration or enforcement of the Act.

Subsections 231.2(1) and 231.6(1) are amended to clarify that the administrative and enforcement purposes for which those subsections apply include the collection of any amount payable by any person under the Act. Parallel amendments are made under clauses 72 and 74 to subsections 289(1) and 292(1) of the *Excise Tax Act*.

These amendments come into force on Royal Assent.

Clause 134

Extension of Time

Tax Court of Canada Act
18.29(3) and (4)

Subsection 18.29(3) of the *Tax Court of Canada Act* has the effect of applying the relevant provisions of the informal procedure of the Tax Court of Canada to an application for an extension of time made under the *Income Tax Act*, the *Excise Tax Act* (i.e., Part IX thereof), the *Employment Insurance Act*, the *Canada Pension Plan* and the *Cultural Property Export and Import Act*. The effect of the amendment to the subsection is that section 18.23 of the *Tax Court of Canada Act* (reasons for judgment) does not apply to those other Acts.

This amendment is consequential on the addition of new subsection 18.29(4) to the *Tax Court of Canada Act*. That subsection sets out the rule for the Tax Court to follow with respect to giving reasons for its judgment in respect of an application made under those other Acts for an extension of time. That rule provides that, on the request of either party to the application, the Court must give its reasons for judgment but those reasons need not be in writing.

These amendments come into force on Royal Assent.

Clause 135

Conditional Amendment – Specially Denatured Alcohol

Excise Act
246(2) and (2.1)

Subsection 143(1) of the *Canada Customs and Revenue Agency Act* amends the English version of subsection 246(2) of the *Excise Act* by replacing a reference therein to "departmental permit" with a reference to "ministerial permit". Clause 127 also amends the section but retains the reference to "departmental permit". Therefore, in the event that clause 127 comes into force after the said subsection

143(1), clause 135 further amends the English version of section 246 of the *Excise Act* to ensure that it refers to a "ministerial permit".

On the other hand, if subsection 143(1) of the *Canada Customs and Revenue Agency Act* comes into force on the same day as, or at any time after, clause 127, it will change the English version of subsection 246(2) of the *Excise Act* back to its existing structure. To avoid that circumstance, clause 135 re-enacts the English versions of subsections 246(2) and (2.1) as set out in clause 127 but with the use of the term "ministerial permit".

Clause 136

Conditional Amendment – How Application Made to Tax Court

ETA
303(3)

Subsection 303(3) of the *Excise Tax Act* is amended by clause 78. The further amendment under clause 136 is conditional on the coming into force of paragraph 155(*f*) of the *Canada Customs and Revenue Agency Act*

Paragraph 155(*f*) of the *Canada Customs and Revenue Agency Act* replaces the reference in existing subsection 303(3) of the *Excise Tax Act* to "Deputy Minister" with a reference to "Commissioner". However, the amendment to that subsection under clause 78 removes the reference to "Deputy Minister" altogether. Therefore, if clause 78 comes into force before paragraph 155(*f*) of the *Canada Customs and Revenue Agency Act*, that paragraph will be unnecessary and is, in that event, repealed under clause 136.

Clause 137

Conditional Amendment – Copies

ETA
291(1)

Subsection 291(1) of the *Excise Tax Act* is amended under clause 74. The further amendment to that subsection under clause 137 is conditional on the coming into force of another amendment to the subsection contained in paragraph 156(*h*) of the *Canada Customs and Revenue Agency Act*.

Paragraph 156(*h*) of the *Canada Customs and Revenue Agency Act* replaces the reference to "Department" in subsection 291(1) of the *Excise Tax Act* with a reference to "Agency". Therefore, if the version of subsection 291(1) as set out in clause 74, which uses the term "Department", comes into force after the said paragraph 156(*h*), it would change the reference to "Agency" back to "Department". To avoid that circumstance, the conditional amendment replaces subsection 291(1), as amended by clause 74, with a version of the subsection that uses the term "Agency".

Clause 138

Conditional Amendment – Prescription Drugs

ETA
Schedule VI, Part I, section 2

This clause contains an amendment that is conditional on the assent of Bill C-80, introduced in the first session of the thirty-sixth Parliament and entitled the *Canada Food Safety and Inspection Act*. That Bill renames the *Food and Drugs Act* and therefore contains a consequential amendment under paragraph 186(*d*) of the Bill to paragraph 2(*c*) of Part I of Schedule VI to the *Excise Tax Act* to replace the existing cross-reference therein to the *Food and Drugs Act*.

An amendment under clause 107 also replaces, effective May 14, 1997, the reference in the said paragraph 2(*c*), but with a reference to

the *Food and Drug Regulations,* which are not renamed by Bill C-80. Therefore, in the event that clause 107 comes into force before paragraph 186(*d*) of Bill C-80, the reference in the latter paragraph to paragraph 2(*c*) is not necessary and is deleted by clause 138 as of the day that Bill C-80 receives Royal Assent.

On the other hand, if clause 107 and paragraph 186(*d*) of Bill C-80 come into force on the same day, paragraph (*b*) of clause 138 re-enacts, as of May 14, 1997, the version of the said paragraph 2(*c*) that refers to the *Food and Drug Regulations*.